

# AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

CONTRACT ID CODE  
R-CPAF

PAGE OF PAGES  
1 of 1

2. AMENDMENT/MODIFICATION NO. M999	3. EFFECTIVE DATE 1 Oct 2004	4. REQUISITION/PURCHASE REQ.NO.	5. PROJECT NO. (if applicable)
6. ISSUED BY OCP	CODE	7. ADMINISTERED BY (if other than item 6)	

US DEPT OF ENERGY  
NNSA SERVICE CENTER, OBS/AFA  
PO BOX 5400  
ALBUQUERQUE, NM 87185-5400  
TERESA M. MARTINEZ (505)845-4127  
tmartinez@doeal.gov

8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code)  Wackenhut Services, Inc. 7121 Fairway Drive, Suite 301 Palm Beach Gardens, FL 33418-3766	(X)	8A. AMENDMENT OF SOLICITATION NO.
		9B. DATED (SEE ITEM 11)
	X	10A. MODIFICATION OF CONTRACT/ORDER NO. DE-AM04-03AL67577
		10B. DATED (SEE ITEM 13) 13 Aug 2003
CODE	FACILITY CODE	

### 11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers  is extended,  is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:  
 (a) By completing items 8 and 15, and returning \_\_\_\_\_ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. **FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER.**  
 If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

### 12. ACCOUNTING AND APPROPRIATION DATA (if required)

### 13. THIS ITEM APPLIES ONLY TO MODIFICATION OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

(X)	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: ( ) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. ITEM 10A.
K	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
	D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor  is not,  is required to sign this document and return \_\_\_\_\_ copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)  
 The purpose of this modification is to change the payments office and the billing instructions. Therefore, block 12, Standard Form 26, Award/Contract, for this contract is modified by deleting the existing language and effective October 1, 2004, inserting the following address in lieu thereof: "U.S. Department of Energy, Oak Ridge Financial Service Center, P.O. Box 5807, Oak Ridge, TN 37831". In addition, the Billing Instructions, located in Section G of the contract, is modified to delete the existing address and insert the following address in lieu thereof: "U.S. Department of Energy, Oak Ridge Financial Service Center, P.O. Box 5807, Oak Ridge, TN 37831".  
 Except as provided herein, all terms and conditions of the document referenced in item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

5A. NAME AND TITLE OF SIGNER (Type or print)	16A. NAME AND TITLE OF SIGNER (Type or print) TERESA M. MARTINEZ Contracting Officer
5B. CONTRACTOR/OFFEROR	16B. UNITED STATES OF AMERICA
15C. DATE SIGNED	16C. DATE SIGNED
(Signature of person authorized to sign)	BY (Signature of Contracting Officer)

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STANDARD FORM 35 (REV. 10-83)  
 Prescribed by GSA  
 FAR (48 CFR) 53.243

DUPLICATE ORIGINAL

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<b>AWARD / CONTRACT</b>		1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 350)	RATING N	PAGE of PAGES 1   54
2. CONTRACT (PROC. INST. IDENT.) NO. DE-AM04-03AL67577		3. EFFECTIVE DATE 18 Aug 2003	4. REQUISITION / PURCHASE REQUEST / PROJECT NO. See Section G	
5. ISSUED BY US DEPARTMENT OF ENERGY NNSA SERVICE CENTER/AFA PO BOX 5400 ALBUQUERQUE, NM 87185-5400 TERESA M. MARTINEZ 505/845-4127 tmartinez@doeal.gov		CODE NNSA SC	6. ADMINISTERED BY (IF OTHER THAN ITEM 5) U.S. DEPARTMENT OF ENERGY NATIONAL NUCLEAR SECURITY ADMINISTRATION NNSA SERVICE CENTER PO BOX 5400 ALBUQUERQUE, NM 87185-5400 SCD: C PAS: (NONE)	

7. NAME AND ADDRESS OF CONTRACTOR (NO., STREET, CITY, COUNTY, STATE AND ZIP CODE) WACKENHUT SERVICES, INC. 7121 FAIRWAY DRIVE, SUITE 301 PALM BEACH GARDENS FL 33418-3766 (561) 472-0600 Prompt Pay: P		8. DELIVERY <input type="checkbox"/> FOB Origin <input checked="" type="checkbox"/> Other (see below)
		9. DISCOUNT FOR PROMPT PAYMENT N
CAGE CODE 1D415		10. SUBMIT INVOICES (4 COPIES UNLESS OTHERWISE SPECIFIED) TO THE ADDRESS SHOWN IN
FACILITY CODE		ITEM See Block 12

11. SHIP TO / MARK FOR See Section F	CODE	12. PAYMENT WILL BE MADE BY U.S. DEPARTMENT OF ENERGY ABQ FINANCIAL SERVICE CENTER ATTN: VGST PO BOX 18050 ALBUQUERQUE, NM 87185-8050 EFT: T	CODE	DOEAL
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13. AUTHORITY FOR OTHER THAN FULL AND OPEN COMPETITION	14. ACCOUNTING AND APPROPRIATION DATA
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15A. ITEM NO See Section B	15B. SUPPLIES/SERVICES	15C. QUANTITY	15D. UNIT	15E. UNIT PRICE	15F. AMOUNT
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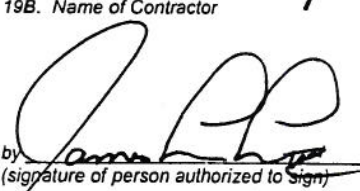

15G. TOTAL AMOUNT OF CONTRACT NTE \$120M

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CONTRACTING OFFICER WILL COMPLETE ITEM 17 OR 18 AS APPLICABLE

17. <input checked="" type="checkbox"/> <b>Contractor's Negotiated Agreement</b> (Contractor is required to sign this document and return 1 copies to issuing office). Contractor agrees to furnish and deliver all items or perform all services set forth or otherwise identified above and on any continuation sheets for the consideration stated herein. The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) this award/contract, (b) the solicitation, if any, and (c) such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein. (Attachments are listed herein.)	18. <input type="checkbox"/> <b>Award</b> (Contractor is not required to sign this document). Your offer on solicitation number , including the additions or changes made by you which additions or changes set forth in full above, is hereby accepted as to items listed above and on any continuation sheets. This award consummates the contract which consists of the following documents: (a) the Government's solicitation and your offer, and (b) this award/contract. No further contractual document is necessary.
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19A. NAME AND TITLE OF SIGNER (TYPE OR PRINT) <b>James L Long III, President &amp; CEO</b>		20A. NAME OF CONTRACTING OFFICER <b>David A Nienow Contracting Officer</b>	
19B. Name of Contractor	19C. Date Signed 8/13/03	20B. United States of America	20C. Date Signed 8/13/03
by  (signature of person authorized to sign)		by  (signature of Contracting Officer)	

ORIGINAL OFFICIAL FILE COPY

PART I - THE SCHEDULE  
SECTION B - SUPPLIES OR SERVICES AND PRICES/COSTS

ITEM	SUPPLIES OR SERVICES	Qty	Unit Price
		Purch Unit	Total Item Amount

0001		1	\$0.00
		Lot	\$0.00

*Noun:* TRAINING/SUPPORT SERVICES FOR THE OFFICE OF SECURE TRANSPORTATION

*ACRN:* U

*NSN:* N - Not Applicable

*Contract type:* R - COST PLUS AWARD FEE

*Inspection:* DESTINATION

*Acceptance:* DESTINATION

*FOB:* DESTINATION

*Descriptive Data:*

The Contractor shall furnish all personnel, facilities, equipment, supplies, travel, materials, and other direct costs reasonable required to accomplish the requirements contained of Attachment 1, Performance Work Statement (PWS), entitled, "Training/Support Services for the Office of Secure Transportation (OST)," dated 26 Jul 02 (revised Feb 19, 2003). Task Orders will be issued pursuant to the requirements contained in the PWS. Task Orders will be issued in accordance with Section H clause, entitled "Ordering Procedures."

0002		1	NSP
		Lot	

*Noun:* DATA AND REPORTS

*ACRN:* U

*NSN:* N - Not Applicable

*Contract type:* R - COST PLUS AWARD FEE

*Inspection:* DESTINATION

*Acceptance:* DESTINATION

*FOB:* DESTINATION

*Descriptive Data:*

Submit data and reports in accordance with Section J, Attachment #2, "Reporting Requirements." This item is not separately priced.



**NOTICE:** The following contract clauses pertinent to this section are hereby incorporated in full text:

**OTHER CONTRACT CLAUSES IN FULL TEXT**

**B001 PAYMENT OF FEE**

The maximum contract amount for CLINs 0001 through 0002 are shown below. Fee is included in the maximum contract amount of CLINs 0001 through 0002. Fee will be negotiated on an individual Task Order basis. Fee will vary depending upon the mix of labor/materials and risk/complexity of the individual order.

Maximum ceiling amount \$120M

Applicable to the following Line Items: 0001-0002

**B002 ESTIMATED COST, BASE, AND AWARD FEE**

CLIN 0001 will be reimbursed on a Cost Plus Award Fee (CPAF) basis. The estimated costs and maximum award fee will be negotiated on an individual Task Order basis. The following information will be established for each order issued under CLIN 0001:

- (a) The total estimated cost of performance is \_\_\_\_ (insert estimated cost of performance)
- (b) The base fee is \_\_\_\_ (insert base fee)
- (c) The maximum award fee is \_\_\_\_ (insert maximum award fee)
- (d) The award fee earned for performance from inception of contract through the evaluation period ending \_\_\_\_ (insert end of evaluation period) has been determined to be \_\_\_\_ (insert award fee earned).
- (e) Pursuant to the FAR Clause 52.232-22, entitled "Limitation of Funds," the total amount of incremental funding allotted to this task order is (to be completed at time of award). It is estimated that this amount is sufficient to cover performance through \_\_\_\_\_ (to be completed at time of award).



**NOTICE:** The following contract clauses pertinent to this section are hereby incorporated in full text:

**OTHER CONTRACT CLAUSES IN FULL TEXT**

**C001 INCORPORATED DOCUMENTS/REQUIREMENTS (APR 1998)**

1. Performance Work Statement, entitled "Training/Support Services for the Office of Secure Transportation", dated 26 Jul 02 (revised Feb 19, 2003) (see Section J).
2. Reporting Requirements, 12 Jul 02 (see Section J). Reports shall be accomplished within the total contract amount. If costs exceed the total contract amount, those additional costs to complete the reports shall be assumed by the contractor

**NOTICE:** The following contract clauses pertinent to this section are hereby incorporated in full text:

**OTHER CONTRACT CLAUSES IN FULL TEXT**

**D001 PACKAGING (JUL 2001)**

Preservation, packaging, and packing for shipment or mailing of all work delivered hereunder shall be in accordance with good commercial practices and adequate to ensure acceptance by common carrier and provide safe transportation at the most economical rate(s).

**D002 MARKING (JUN 2002)**

Each package, report, or other deliverable product shall be accompanied by a letter or other document which:

- (1) Identifies the Task Order by number under which the item is being delivered.
- (2) Identifies the deliverable Item Number or Report Requirement which requires the delivered item(s).
- (3) Indicates whether the Contractor considers the delivered item to be a partial or full satisfaction of the requirement.

In addition to the requirements identified above, the security requirements for packaging, marking, mailing, and shipping classified materials as prescribed by applicable DOE orders and other applicable regulations shall apply.



**I. NOTICE:** The following contract clauses pertinent to this section are hereby incorporated by reference:

**FEDERAL ACQUISITION REGULATION CONTRACT CLAUSES**

52.246-05 INSPECTION OF SERVICES -- COST-REIMBURSEMENT (APR 1984)  
52.246-10 INSPECTION OF FACILITIES (APR 1984)

**II. NOTICE:** The following contract clauses pertinent to this section are hereby incorporated in full text:

**E001 INSPECTION AUTHORITY (APR 2001)**

- (a) Inspection of all items under this contract shall be accomplished by the DOE Contracting Officer Representative (COR), or any other duly-authorized Government representative identified in the individual task order.
- (b) Acceptance of all items and or work effort under this contract (including reporting requirements) shall be accomplished by the DOE Contracting Officer Representative (COR), or any other duly-authorized Government representative identified in the individual task order.

PART I - THE SCHEDULE  
SECTION F - DELIVERIES OR PERFORMANCE

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<u>ITEM/SUPPLIES SCHEDULE DATA</u>	<u>QTY</u>	<u>SHIP TO</u>	<u>MARK FOR</u>	<u>TRANS PRI</u>	<u>DATE</u>
0001	1	U		See Task Individual Orders	
<i>Noun:</i>				TRAINING/SUPPORT SERVICES FOR THE OFFICE OF SECURE TRANSPORTATION	
0002	1	U		See Task Individual Orders	
<i>Noun:</i>				DATA AND REPORTS	

COPY



I. NOTICE: The following contract clauses pertinent to this section are hereby incorporated by reference:

**FEDERAL ACQUISITION REGULATION CONTRACT CLAUSES**

52.242-15 STOP-WORK ORDER (AUG 1989) - ALTERNATE I (APR 1984)  
52.247-48 F.O.B. DESTINATION -- EVIDENCE OF SHIPMENT (DEVIATION) (FEB 1999)

II. NOTICE: The following contract clauses pertinent to this section are hereby incorporated in full text:

**F001 PERIOD OF PERFORMANCE (FEB 1997)**

Period of performance under this contract shall be 5 years after contract award. The contract completion date includes all technical and administrative effort.

**F002 CONTRACT DELIVERIES (FEB 1997)**

The following terms, if used within this contract in conjunction with contract delivery requirements (including data deliveries), are hereby defined as follows:

- (a) "MAC" and "MARO" mean "months after the effective date for award of the contractual action (as shown in block 3, Section A, SF 26)".
- (b) "WARO" means "weeks after the effective date for award of the contractual action".
- (c) "DARO" means "days after the effective date for award of the contractual action".
- (d) "ASREQ" means "as required". Detailed delivery requirements are then specified elsewhere in Section

F.

**F003 PRINCIPAL PLACE OF PERFORMANCE (JUN 2002)**

The activities of curricula/training, munitions support, shipping and receiving, and OST property management will primarily take place on-site at DOE/NNSA Service Center, Albuquerque, New Mexico. Primary logistics support and secondary shipping and receiving will take place at Ft. Chaffee, Arkansas. The remaining work may take place at other sites as specified in the PWS, Attachment 1, the individual Task Orders, or as may be directed by the COR.

**G001 CORRESPONDENCE PROCEDURES (JUL 2001)**

To promote timely and effective administration, correspondence submitted under this contract shall contain a subject line commencing with the contract number, contractor's name and topic. If no Government Contract Administration Office is designated on the face page of this contract, all correspondence shall be subject to the following procedures:

(a) Technical Correspondence.

Technical correspondence (as used herein, excludes technical correspondence where patent or technical data issues are involved and correspondence which proposes or otherwise involves waivers, deviations, or modifications to the requirements, terms, or conditions, of this contract) shall be addressed to the DOE Program Manager, COR, or other duly authorized Government representative, with an information copy of the correspondence to the Contract Specialist. The point of contact for technical correspondence is:

DOE Program Manager, COR or other authorized Government representative identified on the Task Order:

U.S. Department of Energy  
Vicki Cole-Orr /OST  
P.O. Box 5400  
Albuquerque, NM 87185-5400  
505-845-6973  
505-284-7156 fax  
email: [vcole-orr@doeal.gov](mailto:vcole-orr@doeal.gov)

(a) Other Correspondence.

Other than technical correspondence shall be addressed to the Contract Specialist with information copies of the correspondence to the Contracting Officer's Representative and to the Patent Counsel (if patent or technical data issues are involved). The contractor shall use the Contract Specialist as the focal point of contact. The Contract Specialist's name, address, phone number, fax number, and email address is as follows:

Contract Specialist:

U.S. Department of Energy  
NNSA Service Center  
Teresa M. Martinez/AFA  
P.O. Box 5400  
Bldg. 20388, Texas & H Sts, KAFB  
Albuquerque, NM 87185-5400  
505-845-4127  
505-284-7369 fax  
[tmartinez@doeal.gov](mailto:tmartinez@doeal.gov)

(c) Property Administrator Correspondence

The Contracting Officer has delegated certain duties and responsibilities associated with the Government-furnished property and/or contractor-acquired property administration under this contract to the Property Administrator. Their address and telephone number are as follows:

**COPY**



U.S. Department of Energy  
NNSA Service Center  
ATTN: Robert Rougemont  
P.O. Box 5400  
Bldg. 20388, Texas & H Sts, KAFB  
Albuquerque, NM 87185-5400  
505-845-4592

(d) Patent Counsel.

Correspondence pertaining to patent, technical data, or intellectual property shall be addressed to the Contract Specialist with information copies to the COR and the DOE Patent Counsel as follows:

U.S. Department of Energy  
NNSA Service Center  
Office of Chief Counsel  
ATTN: Patent Counsel  
P.O. Box 5400  
Albuquerque, NM 87185-5400

(e) Classified Correspondence. (See Section D for security requirements).

(f) The Contracting Officer for this contract is:

David A. Nienow  
U.S. Department of Energy  
NNSA Service Center/AFA  
P.O. Box 5400  
Bldg. 20388, Texas & H Sts, KAFB  
Albuquerque, NM 87185-5400  
505-845-6072

**G002 BILLING INSTRUCTIONS (JUL 2001)ALTERNATE I (NOV 2001)**

- (a) The following instructions are provided for the use by the contractor in the preparation and submission of vouchers requesting reimbursement for work performed on negotiated cost-type contracts. The submission of vouchers will reduce correspondence and other causes for delay to a minimum and will assure prompt payment to the contractor.
- (b) In requesting reimbursement, contractors shall use the Government voucher Standard Form (SF) 1034, Public Voucher for Purchases and Services Other Than Personal. The Standard Form 1034 may be accessed at <http://procure.msfc.nasa.gov/msfc/forms/forms.html>. A certified summary sheet, shall accompany the SF 1034.
- (c) The contractor shall submit the original SF 1034 voucher plus two copies. The contractor shall also provide one copy of support documentation for travel costs incurred. Distribution of the vouchers shall be as follows:

(1) Original Voucher  
U.S. Department of Energy  
NNSA Service Center  
Attn: OFCFO  
PO Box 18050  
Albuquerque, NM 87185-8050

(1) Copy Voucher  
U.S. Department of Energy  
NNSA Service Center/AFA  
ATTN: Teresa M. Martinez  
P.O. Box 5400  
Albuquerque, NM 87185-5400

(1) Copy Voucher  
U.S. Department of Energy  
ATTN: Vicki Cole-Orr/OST  
P.O. Box 5400  
Albuquerque, NM 87185-5400

- (d) Each voucher submitted shall include the following:
- (1) Task Order number;
  - (2) contractor name;
  - (3) date of voucher;
  - (4) invoice number;
  - (5) total amount of voucher;
  - (6) period covered or items delivered; and
  - (7) cumulative amount invoiced to date.

**G003 IMPLEMENTATION OF TAXPAYER IDENTIFICATION NUMBER (APR 1998)**

In accordance with FAR 52.204-03, Taxpayer Identification Number is 59-094-0269 (insert TIN).

**G004 LIST OF ACRONYMS**

The following acronyms are used throughout this document:

AL - Albuquerque Operations Office  
CO - Contracting Officer  
COR - Contracting Officer's Representative  
CPAF - Cost Plus Award Fee  
DEAR - Department of Energy Acquisition Regulation  
DOE - Department of Energy  
FAR - Federal Acquisition Regulations  
FOCI - Foreign Ownership, Control, or Influence  
FFP - Firm-Fixed Price  
IG - Inspector General  
NMGR - New Mexico Gross Receipts Tax  
NNSA - National Nuclear Security Administration



PART I - THE SCHEDULE  
SECTION G - CONTRACT ADMINISTRATION DATA

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- OCI - Organizational Conflict of Interest
- P.L. - Public Law
- PWS - Performance Work Statement
- RFP - Request for Proposal
- SEC - Securities and Exchange Commission
- SF - Standard Form
- UCNI - Unclassified Controlled Nuclear Information

**COPY**

**NOTICE:** The following contract clauses pertinent to this section are hereby incorporated in full text:

### **H001 INDEFINITE QUANTITY**

This is an Indefinite Quantity contract as contemplated by FAR 16.504. The total scope of the technical tasks for which orders may be issued is set forth in paragraph 3.0 of the attached PWS. The maximum dollar amount the Government may order under this contract is \$120,000,000.00; the minimum amount is \$1,200,000.00.

### **H002 ORDERING PROCEDURES (SEP 1997)**

(a) Orders will be issued by a Procuring Contracting Officer in accordance with the Ordering clause of this contract. However, the following procedures shall be used for negotiation of orders.

(1) The Contracting Officer will provide the Contractor with a copy of the notification of each proposed Order, which will include a description of work to be performed, description of expertise required, and desired completion date.

(2) The Contractor shall, within 20 days from receipt (or as agreed to) of the proposed Order: (i) submit to the Contracting Officer a brief technical discussion describing how the work will be performed; (ii) submit a cost proposal in Standard Form 1411 format, identifying labor categories and number of hours within each category required for the performance of the proposed work; (iii) identify and provide rationale for all non-labor cost elements required for performance; and (iv) identify any Government property required for performance.

(3) Upon receipt of the proposal, the Contracting Officer will analyze the proposal and, if acceptable, issue an Order directing the Contractor to commence performance, or if the proposal is not fully acceptable as offered, negotiations shall be conducted prior to issuance of any Order. In the event issues pertaining to a proposed work cannot be resolved to the satisfaction of the Contracting Officer, the Contracting Officer reserves the right to withdraw and cancel the proposed work. In such event, the Contractor shall be notified, via letter, of the Contracting Officer's decision. This decision shall be final and conclusive and shall not be subject to the Disputes clause or the Contract Disputes Act.

(b) The Contractor is not authorized to commence performance prior to issuance of the Order by the Contracting Officer.

(c) The contractor shall use the format shown in Table H-1 for preparing the cost portion of the proposal that addressed the following:

(1) Direct Labor. List each direct labor category separately. Identify base rates by CFY and source of base rates (i.e., date of base rates, individual/category average rates, etc.). Identify annual escalation rates(s) proposed and its source. Provide escalation methodologies and calculations showing development of proposed rates. Identify the basis of proposed rates (e.g., Forward Pricing Rate Agreement and date of agreement, bidding rates and the date of submission or actual rates used and the effective date, billing rates and date of approval etc.). If composite rates are used, provide the development of composite rates and labor dollar calculations for each labor category. If average rates are used within a specific labor category, provide calculations used to derive the average rates. If temporary labor is proposed, demonstrate the impact, if any, that such labor has on in-house direct and indirect labor and overhead rates. Offerors are to describe its established practice for use of uncompensated time/overtime and state whether the treatment of uncompensated time/overtime reflects the offeror's established practice.

(2) Indirect Cost Rates and/or Factors. Identify when the contractor's fiscal year (CFY) begins and ends. Provide all indirect cost rates (such as, fringe benefits, labor overhead, material overhead, G&A, COM, etc.) and applicable allocation bases by CFY. If composite rates are utilized, provide the calculations used in deriving the composite rates. Identify the basis of proposed rates (e.g., Forward Pricing Rate Agreement and date of agreement, bidding rates and the date of submission or actual rates used and the effective date, billing rates and the date of approval, etc.).

(3) Subcontracts/Interorganizational Transfers (IOTs), and Consultants. Obtain cost proposals from each subcontractor and IOT using the same cost breakout required for the prime offeror (See Table H-1). Provide a summary listing anticipated subcontractors/IOTs/consultants using Table H-1. Perform and provide an explanation of the results of evaluations and cost/price analysis of subcontract/IOT proposals. If decrement factors are used, the offeror shall provide an explanation of their development and application. Provide copies of consultant agreements to substantiate proposed rates.

(4) Material, Travel, and Other Direct Costs (ODCs). Separately identify costs by CFY, for travel, material, and other direct costs required to perform each task order(s). The travel breakout shall include the purpose and number of trips, origin and destination(s), duration, and travelers per trip. For proposed materials, provide a list (with costs) of all equipment, materials and supplies for each CFY. For all other ODC's provide a breakout and explanation of proposed costs by CFY.

(5) Cost of Money (COM). Refer to the Section L provision entitled Facilities Capital Cost of Money. Provide a schedule by task which contains proposed cost of money (COM) factors, if applicable, to include a display of all individual bases for the COM amounts. Submit a DD Form 1861, Contract Facilities Capital Cost of Money, for each CFY.

(6) Fee. The offeror shall separately propose a fee for each task order and provide substantiation for the fee proposed. NOTE: Fee will be separately negotiated for each task order issued and will not be set at the contract level.

(7) New Mexico Gross Receipts Tax (NMGR). NMGR may be assessed for work performed in New Mexico. For assistance in determining the extent to which NMGR may apply to proposed work and applicable rates, contact the New Mexico Taxation and Revenue Department, 5301 Central Ave., NE, PO Box 8485, Albuquerque, NM 87198, (505) 841-6200. Identify the cost elements and amounts included in the NMGR base, if applicable. Demonstrate the method of calculating total tax dollars included in the proposal.

(d) The effort to be performed shall not commence until the Procuring Contracting Officer (PCO) issues an approved Task Order. The PCO will issue approved Task Orders, authorizing the contractor to begin work in accordance with the clause in Section I, FAR 52.216-18, Ordering.



**TABLE H-1  
TASK ORDER COST PROPOSAL FORMAT**

COST ELEMENT	Beginning CFY*			Ending CFY*			
	BASE	RATE	AMT	BASE	RATE	AMT	TOTAL PROPOSED AMOUNT
DIRECT LABOR (List each direct labor category separately.)	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX
TOTAL DIRECT LABOR	XXXX		XXXX	XXXX		XXXX	XXXX
TOTAL LABOR OVERHEAD	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX
TOTAL LABOR & OVERHEAD	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX
SUBCONTRACTS, IOTS, CONSULTANTS (List Separately)			XXXX			XXXX	XXXX
MATERIAL			XXXX			XXXX	XXXX
APPLICABLE MATERIAL OVERHEAD	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX
TRAVEL			XXXX			XXXX	XXXX
APPLICABLE TRAVEL OVERHEAD							
ODCs			XXXX			XXXX	XXXX
APPLICABLE ODC OVERHEAD							
G&A	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX
SUBTOTAL COSTS			XXXX			XXXX	XXXX
COST OF MONEY (List factors separately. See DD Form 1861)	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX
FEE	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX
TOTAL COST AND FEE							
NMGRT (if applicable)							
TOTAL PRICE			XXXX			XXXX	XXXX

\* CFY = Contractor's Fiscal Year. Submit a cost element summary for each year of performance.

**COPY**

**H003 SOLICITATION NUMBER (APR 1998)**

Solicitation Number: DE-RP04-02AL67577

**H004 INSURANCE--LIABILITIES TO THIRD PARTY (JUN 2002)**

The offeror shall certify in writing that the minimum insurance required, per FAR clause 52.228-7, will be obtained if selected for award.

- (a) **WORKERS COMPENSATION**
  - Bodily Injury by Accident
  - \$100,000 each accident
  - Amount required by State of New Mexico under applicable Worker's Compensation and occupational disease statutes
  
- (b) **GENERAL LIABILITY**
  - Third Person Bodily \$1,000,000.00
  - combined single Injury/Property limit, each occurrence
  
- (c) **AUTOMOBILE**
  - \$200,000 per person
  - \$500,000 per occurrence for bodily injury
  - \$20,000 per occurrence for property damage
  
- (d) **INTERSTATE PUBLIC LIABILITY**
  - Public liability and property damage insurance for the transportation of hazardous commodities in the minimum amounts prescribed in 49 CFR 387.0.
  
- (e) The amount of liability coverage on other policies shall be commensurate with any legal requirements of the state and locality, plus sufficient to meet normal and customary claims.

**H005 PERSONNEL SECURITY CLEARANCE (JUN 2002)**

- (a) The contractor is required to conduct pre-employment investigative screening of prospective employees in order to ensure trustworthiness and reliability. The contractor shall provide certification to the Contracting Officer (CO) that an investigative screening has been completed prior to employment. The certification shall include verification of identity, previous employment and education, and the results of credit and law enforcement checks.
  
- (b) Personnel assigned by the contractor to work at the DOE AL complex will be required to obtain a security clearance. The levels of clearance are as follows:

**CLEARANCE LEVEL**  
Q - Sensitive  
Q - Nonsensitive  
L - Confidential/Secret

Under this contract, contractor personnel shall be required to have a Q clearance level.

- (c) This requirement may be waived by the CO for personnel not involved with classified information while clearances are being processed, or for personnel associated with the program for short periods of time, such as consultants.

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- (d) The contractor shall turn in badges for employees: 1) who are no longer working on the contract; 2) who no longer require access; 3) when their badge expires; or 4) when the contract expires or is terminated. Badges shall be returned to the CO.

**H006 SERVICES OF CONSULTANTS (COST-REIMBURSEMENT AND LETTER CONTRACTS) (JUL 2001)**

- (a) In addition to the provisions of the clause of this contract, entitled "Subcontracts (Cost Reimbursement and Letter Contracts," the prior written consent of the Contracting Officer also shall be obtained:
  - (1) for the utilization of the services of any consultant under this contract exceeds the daily rates of \$1,000, exclusive of travel costs; or
  - (2) where the services of any consultant under this contract will exceed 25 days in any calendar year; or
  - (3) exceeds a total value of \$25,000.
- (b) Whenever the Contracting Officer's written consent is required, the contractor will obtain and furnish to the Contracting Officer the information concerning the need for and selection of such consultant services and the reasonableness of the fees to be paid, including, but not limited to, whether such fees to be paid to any consultant exceed the lowest fee charged by consultants to other firms for performing consulting services that are similar in nature.
- (c) The contractor must obtain and furnish to the Contracting Officer either an Organizational Conflict of Interest (OCI) Disclosure or Representation pursuant to the latest DOE guidance for all consultants to be utilized prior to their performing any effort under this contract. No effort shall be performed by the consultant until the Contracting Officer has cleared them for OCI.
- (d) The following consultants have been cleared by the Contracting Officer for OCI:

Name of Company	Value of Award
_____	
_____	

**H007 CONTRACTOR'S PROGRAM MANAGER (JUL 2001)**

The contractor shall designate a Program Manager who will be the contractor's authorized supervisor for technical and administrative performance of all work hereunder. The Program Manager shall provide the single point of contact between the contractor and the Contracting Officer's Representative(s) under this contract. All administrative support for technical personnel required to fulfill the work stated in the contract shall be the responsibility of the contractor. The Program Manager shall receive and execute, on behalf of the contractor, such technical directions as the DOE Contracting Officer's Representative(s) may issue within the terms and conditions of the contract.

**H008 OBSERVANCE OF NATIONAL HOLIDAYS/BILLABLE TIME (JUL 2001)**

- (a.) OBSERVANCE OF NATIONAL HOLIDAYS/ADMINISTRATIVE TIME-OFF
  - (1) The Government observes the following days as national holidays.
    - (a) New Year's Day
    - (b) Martin Luther King Day
    - (c) President's Day
    - (d) Memorial Day
    - (e) Independence Day
    - (f) Labor Day
    - (g) Columbus Day
    - (h) Veterans' Day

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- (i) Thanksgiving Day
- (j) Christmas Day

Additionally, the Government will observe any other day designated by Federal statute, Executive Order, or Presidential proclamation.

(2) The contractor shall not exceed the total number of holidays identified in paragraph a above. Contractor personnel shall comply with their own company's personnel policy and procedures regarding the administration of holidays. The costs associated with the observance of such holidays shall be consistent with established company's cost accounting standards and practices; other terms and conditions of the contract; and those limitations set forth in Federal Acquisition Regulation Part 31.

(3) Any administrative time-off granted as a result of early holiday release; release or delay due to inclement weather; or any other administrative release is at the discretion of the contractor. However when granting any administrative time-off, the contractor shall continue to provide sufficient personnel to perform critical or essential tasks under this contract. Costs for administrative time-off granted by the contractor to its employees shall not be directly charged to the contract, nor shall the work be performed subsequently at premium or overtime pay. Additionally, the Government will not reimburse the contractor for hours not worked by its employees.

**(b.) BILLABLE TIME**

(1) Billable time performed during contractor's normal duty hours of \_\_\_\_\_ AM to \_\_\_\_\_ PM, Monday through Friday, may include the following:

- (a) from the contractor's plant to assigned site of work or Government training;
- (b) in performing the assigned duties;
- (c) transfer to a new assigned site of work; and
- (d) return from assigned site of work to the contractor's plant.

(2) Billable time outside normal duty hours will be reimbursed at normal salary or hourly rates.

(3) Billable travel time (except as provided in (1), above), shall include actual travel time and time to points of departure awaiting transportation. Overtime premiums will not be paid for time in travel nor will hours spent in continuous travel apply toward total workday or workweek hours in calculating overtime.

(4) The following are not considered to be time spent in performance of work and shall not be billable, or payable under this contract:

- (a) sick leave
- (b) vacation leave
- (c) emergency leave
- (d) travel time to and from job assignment for leave or holiday
- (e) travel time during other than the normal duty hours identified in paragraph (1) above
- (f) unauthorized time spent before leaving contractor's plant for assigned work site; and
- (g) time spent awaiting security clearances.

(c.) If further guidance is required, the contracting officer will issue written instructions as deemed necessary.

**H009 CONFIDENTIALITY OF INFORMATION (JUL 2001)**

(a) To the extent that the work under this contract requires that the Contractor be given access to or be furnished with confidential or proprietary business, technical, or financial information or data belonging to

other entities which is clearly marked as confidential or proprietary, the Contractor shall, after receipt thereof, treat such information in confidence and agrees not to appropriate such information to its own use or to disclose such information to third parties unless specifically authorized in writing by the Contracting Officer. The foregoing obligations, however, shall not apply to:

- (1) Information or data which is in the public domain at the time of receipt by the Contractor;
- (2) Information or data which is published or otherwise subsequently becomes part of the public domain through no fault of the Contractor;
- (3) Information or data which the Contractor can demonstrate was already in its possession at the time of receipt thereof; or
- (4) Information or data which the Contractor can demonstrate was received by it from a third party who did not require the Contractor to treat it in confidence.

(b) The Contractor agrees (1) to enter into an agreement, identical in all material respects to the requirements of paragraph (a) above, with each entity supplying such confidential or proprietary information or data to the Contractor under this contract and (2) to supply a copy of such agreement to the Contracting Officer. Upon request of the Contracting Officer, the Contractor shall furnish the Government with reports which specify any information or data received as confidential or proprietary and which identify the entity or entities who supplied the Contractor with such information or data.

(c) The Contractor shall obtain the written agreement of each employee permitted access to or furnished with confidential or proprietary business, technical, or financial information or data, whereby the employee agrees that such information or data which the Contractor is obligated to treat in confidence will not be discussed, divulged or disclosed except to those persons within the Contractor's organization directly concerned with the performance of this contract or to Government representatives. Notwithstanding the foregoing Contractor-employee agreement, upon request of the Contracting Officer, the Contractor agrees to obtain from each employee a confidentiality agreement acceptable to the Contracting Officer.

(d) This clause shall be included in any subcontract under which there is a requirement or there becomes a requirement that the subcontractor be given access to or be furnished with confidential or proprietary business, technical, or financial information or data.

#### **H010 SOFTWARE RIGHTS (JUL 2001)**

If at any time during the performance of this contract, the contractor has reason to believe that:

- (a) the utilization of Government-furnished computer resources, specifically Government-furnished software, may involve or result in the violation of the DOE's license agreement; or
- (b) the performance of a requirement or task/delivery would involve the acquisition of licensed software to be delivered to the Government.

Then the contractor shall notify the Contracting Officer in writing and provide an explanation of the circumstances. The contractor is not authorized to violate any licensing agreements, cause the DOE to violate any licensing agreements, or acquire software which is covered by a licensing agreement on behalf of the Government without prior authorization of the Contracting Officer.

#### **H011 RELEASE OF INFORMATION (JUL 2001)**

Any proposed public release of information including publications, exhibits, or audiovisual productions pertaining to the effort/items called for in this contract shall be submitted for approval prior to actual printing and distribution. Approval authority is DOE Headquarters (HQ), HQ Office of Placement and Administration, Washington, DC. Proposed releases are to be submitted to DOE-AL, Office of Public Affairs, Albuquerque, NM 87185-5400. All



proposed releases should conform to the requirements of the DOE Order 241.1A pertaining to the public release of information.

**H012 KEY PERSONNEL (JUN 2002)**

(a) Pursuant to the clause in Part II, Section I entitled "Key Personnel" (DEAR 952.235-70), the Contractor's key personnel are as follows:

NAME*	TITLE
<u>Larry Berrong</u>	<u>Project Manager</u>
<u>Wayne Cates</u>	<u>Assistant General Manager, Logistics</u>
<u>Pete Cooksey</u>	<u>Assistant General Manager, Training</u>

Key Personnel are dedicated full-time to this contract.

(b) The clause entitled "Key Personnel" contains a requirement for notification to the Contracting Officer reasonably in advance (i.e., not less than thirty (30) calendar days) of diversion of, or substitution for, any of these individuals. The Contractor shall obtain consent from the Contracting Officer prior to any substitution or diversion of key personnel.

**H013 GOVERNMENT-FURNISHED FACILITIES AND SERVICES (JUL 2001)**

(a) During contracting performance, the Government will furnish the contractor office space during contract performance on an as-required basis at DOE-AL, Ft. Chaffee, and other sites as necessary. Additional office space may be provided by the Government as the DOE project demands. When government-provided space is not available at or near the work and/or training site, and the task requires on-site performance, suitable space may be rented by the contractor with prior approval of the Contracting Officer. The contractor shall be reimbursed for the reasonable actual costs of such rental space, necessary utilities, janitorial services, telephone services, and office furnishing and equipment.

(b) On-site utilities and office furnishings, standard manuals, supplies, and access to the NNSA Service Center computer systems may be furnished by the Government on an as-required basis. The Government may also provide all telephone and janitorial services, and on-site mail service for the on-site facilities during contract performance. "On-site" is defined as a Government specified location on/or at a Government facility.

**H014 GOVERNMENT-FURNISHED PROPERTY (JUL 2001)**

(a) In accordance with FAR 52.245-5 as supplemented by DEAR 952.245-5, the property listed in Section J, Attachment 6, is hereby provided for use in the performance of this contract.

(b) Reporting Requirements.

(1) The reports required in accordance with the clause referenced above, shall be submitted on DOE Form 4300.3.

(2) The reports are to include all capital equipment and sensitive items acquired or furnished under this contract, whether or not it is listed herein.

(c) Low Dollar Value Limitation. Except as otherwise authorized by the Contracting Officer in writing and notwithstanding the contract clause identified in paragraph (a) above, the contractor is not authorized to acquire as a direct charge item under this contract any facilities, equipment (including office equipment), furniture, fixtures or other real or personal property items having a unit acquisition cost of five thousand dollars (\$5,000) or more. The contractor may request authorization for such acquisitions from the Contracting Officer. Any request for authorization shall include any analysis of the most economical method of acquisition.

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**H015 COMPUTER SYSTEMS SECURITY (JUL 2001)**

- (a) The contractor agrees to comply with the DOE directive(s) and all other regulations specified in this contract or as required by law or regulations.
- (b) The contractor shall immediately issue written notification to the Contracting Officer when an employee of the contractor no longer requires access, to the NNSA Service Center computer systems.

**H016 REPORTING OF FRAUD, WASTE, ABUSE, CORRUPTION, OR MISMANAGEMENT (JUL 2001)**

The contractor is required to comply with the following in accordance with DOE O 221.1:

- (a) Notify their employees annually of their duty to report allegations of fraud, waste, abuse, misuse, corruption, criminal acts, or mismanagement relating to DOE programs, operations, facilities, contracts or information technology systems to appropriate authorities. The notification shall include the provision that employees should, when appropriate, report directly to the OIG any information concerning alleged wrongdoing by DOE employees, its contractors, subcontractors, grantees or other recipients of DOE financial assistance; or their employees.
- (b) Display the OIG hotline telephone number in common areas of buildings, such as cafeterias, public telephone areas, official bulletin boards, reception rooms, and building lobbies.
- (c) Publish the OIG hotline telephone number in telephone books and newsletters in the contractor's cognizance.
- (d) Report to the OIG any allegations of reprisals taken against employees who have reported fraud, waste, abuse, misuse, corruption, criminal acts, or mismanagement relating to DOE programs, operations, facilities, contracts, or information technology systems.
- (e) Report to the OIG within a reasonable period of time, but not later than 24 hours, all alleged violations of law, regulations, or policy, including incidents of fraud, waste, abuse, misuse, corruption, criminal acts, or mismanagement which have been referred to Federal, State, or local enforcement entities.
- (f) The DOE IG hotline telephone number is 1-800/451-1625 or 202/586-4073.

**H017 ENVIRONMENT, HEALTH, AND SAFETY PLAN (GOVERNMENT-OWNED OR LEASED FACILITIES) (JUL 2001)**

- (a) In performance of the work, the contractor shall comply with all applicable federal and state environmental, health, and safety regulations and shall take all reasonable precautions to protect the environment, health, and safety of its employees, DOE personnel, and members of the public. The contractor shall participate in all emergency response drills and exercises.
- (b) The contractor shall take all necessary and reasonable steps to minimize the impact of its work on DOE functions and employees, and immediately report all job-related injuries and/or illnesses which occur in any DOE facility to the Contracting Officer Representative (COR) named in Section G of the contract. Upon request, the contractor shall provide a copy of occupational safety and health self-assessments and/or inspections of work sites for job hazards for its DOE facilities to the COR.
- (c) The contractor shall develop, implement, and maintain an Environment, Health, and Safety Plan, which shall describe the contractor's program for implementing the applicable regulations and requirements. The plan shall consist of the elements environment, health, and safety required by the local State. The plan shall also include information on the contractor's responsibility for providing treatment for employees who become ill or are injured in DOE facilities. A copy of the plan shall be provided to DOE within 30 days of the start of work.



(d) The Contracting Officer may notify the contractor, in writing, of any noncompliance with the terms of this clause, plus the corrective action to be taken. After receipt of such notice, the contractor shall immediately take such corrective action.

(e) In the event that the contractor fails to comply with the terms and conditions of this clause, the Contracting Officer may, without prejudice to any other legal or contractual rights, issue a stop work order halting all or any part of the work. Thereafter, a start order for resumption of the work may be issued at the discretion of the Contracting Officer. The contractor shall not be entitled to an equitable adjustment of the contract amount or extension of the performance schedule on any stop work order issued under this special contract requirement.

#### **H018 NONSUPERVISION OF CONTRACTOR EMPLOYEES ON GOVERNMENT FACILITIES (JUL 2001)**

The Government shall not exercise any supervision or control over contractor employees performing services under this contract. The contractor's employees shall be held accountable solely to the contractor's management, who in turn is responsible for contract performance to the Government.

#### **H019 CONTRACTOR IDENTIFICATION SPECIFICATIONS (JUL 2001) (JUN 2002)**

(a) Resident contractor personnel, while visiting and/or working within Government facilities on a continuous basis (part-time, or full-time) must be recognizable as contractors while in Government facilities. This shall be accomplished by the wearing of distinctive clothing bearing the name of the company or by wearing appropriate badges.

(b) Badges shall be worn on the outermost garment in the chest area. Such badges will neither replace base passes nor be regarded as positive proof of identification. Rather, they will serve to clearly differentiate between Government and non-Government personnel and determine the level of access. Contractors will be responsible for acquiring an appropriate number of badges to meet the needs of their employees.

#### **H020 IDENTIFICATION AND PROTECTION OF UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION (UCNI) (JUL 2001)**

In the performance of this contract, the contractor is responsible for complying with the following requirements and for flowing down all requirements to subcontractors when unclassified controlled nuclear information is involved in the work effort:

- (1) If the contractor has a formally designated Classification Officer, the Classification Officer-
  - (a) serves as a Reviewing Official for information under his/her cognizance;
  - (b) trains and designates other Reviewing Officials in his/her organization, subordinate organizations, and subcontractors and maintains a current list of all Reviewing Officials; and
  - (c) may overrule UCNI determinations made by Reviewing Officials under his/her cognizance.
- (2) If the contractor has no formally designated Classification Officer, the contractor submits a request for the designation of Reviewing Officials to the local Federal Classification Officer (for Headquarters, this is the Director of Nuclear and National Security Information) in accordance with the instructions contained in DOE M 471.1-1, Chapter I, Part B.
- (3) The contractor's Reviewing Officials use appropriate UCNI guidelines (i.e., General Guideline, Topical Guidelines, Internal Guidelines; see DOE M 471.1-1, Chapter I, Part A) to review matter and identify what specific Government information is UCNI, in accordance with the instructions contained in DOE M 471.1-1, Chapter I, Part B.



(4) The contractor develops and issues UCNI internal guidelines, as necessary and with the approval of the local Federal Classification Officer, if appropriate, and the Director of Nuclear and National Security Information, in accordance with the instructions contained in DOE M 471.1-1, Chapter I, Part A.

(5) The contractor's Reviewing Officials apply or authorize the application of UCNI markings to any unclassified matter that contains UCNI in accordance with the instructions contained in DOE M 471.1-1, Chapter I, Part C.

#### **H021 REQUIRED ESCORT-LACK OF FOREIGN, OWNERSHIP, CONTROL, OR INFLUENCE (FOCI) CLEARANCE (JUL 2001)**

Until such time that the contractor receives a Government-issued FOCI clearance, all contractor personnel shall be escorted within the DOE complex by a designated individual identified by the program office.

#### **H022 PAYMENT OF BASE AND AWARD FEE**

- (a) Award Fee. For award fee determination purposes, the contract shall be divided into six-month periods. The aggregate amount of all award fee pools shall be limited to the maximum award fee available as specified in Section B, paragraphs B002. Award fee denied during any period pursuant to the Performance Evaluation Quality Assurance (QA) Plan shall not be available in subsequent periods.
- (b) Base Fee. The base fee, if any, will be paid in monthly installments based on the percentage of completion of work as determined by the CO.
- (c) Determination/Schedule of Award Fee. The Government shall at the conclusion of each specified evaluation period(s) evaluate the contractor's performance on the Task Order(s) for a determination of award fee earned. The contractor agrees that the determination as to the amount of award fee earned will be made by the DOE Fee Determination Official (FDO) and such determination concerning the amount of award fee earned is binding on both parties.
- (d) It is agreed that the evaluation of contractor performance shall be in accordance with the Performance Evaluation QA Plan referenced in the provision entitled "Performance Evaluation QA Plan" and that the contractor shall be promptly advised in writing of the determination, and the reasons why it was or was not earned. It is further agreed that the contractor may submit a self-evaluation of performance for each period under consideration. While it is recognized that the basis for determination of the fee shall be the evaluation by the Government, any self-evaluation which is received within ten (10) days after the end of the period being evaluated, may be given such consideration, if any, as the FDO shall find appropriate.
- (e) This contract will be modified by a unilateral contract modification, executed by the CO when the award fee, if any, has been determined by the FDO. The modification shall set forth the amount of fee earned for the performance period evaluated. Upon receipt of the contract modification, the contractor may submit a public voucher for payment of the total award fee earned for the period evaluated less provisional amounts paid during the evaluation period. The Government will promptly make payment of any award fee upon submission, by the contractor to the CO or his authorized representative, of a public voucher or invoice in the amount of the total fee earned for the period evaluated.

#### **H023 PERFORMANCE EVALUATION QA PLAN (JUL 2001)**

- (a) The Performance Evaluation QA Plan (PEQAP), Attachment 5, to this contract, upon which the determination of award fee will be based, (including the criteria to be considered under each area evaluated and the percentage of award fee, if any, available for each area,) will be unilaterally established by the Government.



- (b) The PEQAP shall set forth the criteria upon which the contractor will be evaluated for performance relating to (1) quality of work, (2) timeliness, and (3) cost control effectiveness.
- (c) The PEQAP may be revised unilaterally by the Government at any time during the period of performance. Notification of such changes shall be provided to the contractor ten calendar days prior to the start of the evaluation period to which the change will apply. The contractor agrees that the PEQAP is binding on both parties.

**H024 LOBBYING RESTRICTION (ENERGY & WATER DEVELOPMENT APPROPRIATIONS ACT, 2002) (NOV 2001)**

The contractor agrees that none of the funds obligated on this award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

**H025 SUBCONTRACTING PLAN (JUL 2001)**

The Contractor's Subcontracting Plan number DE-RP04-02AL67577, dated 14 Mar 2003, is incorporated in this contract by reference.

**H026 NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS - SENSE OF CONGRESS (JAN 2002)**

It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American-Made.

**H027 DOE VIOLENCE IN THE WORKPLACE POLICY (JUL 2001)**

The Contractor shall comply with DOE's Violence in the Workplace Policy. Acts of aggression, violence (physical or verbal, intentional or reckless) and/or threats of such will not be tolerated in any situation at any Government facility. Contractors who engage in aggressive/violent behavior or threaten violence, among themselves or with Government employees, will be subject to removal from the premises.

It is the responsibility of contractor supervisors or management representatives to report any incident (or threat) of aggression, harassment, hostility, intimidation, or violence to the Contracting Officer or the COR. In an emergency (i.e., any situation where violence has occurred or appears to be imminent), contractor employees should first call 911. Any contractor employee who believes that he/she has experienced an act of aggression or violence, or has had to perform his/her duties in a hostile environment, has a right to have these activities investigated and relieved. Reprisal against anyone who reports incidents of violence or who is involved in an investigation is prohibited.

**H028 APPLICABLE REQUIREMENTS**

The contractor shall comply with the following list of applicable documents as they may be amended from time to time. The contractor is responsible for providing any reports and/or deliverables required under these documents. The contractor shall also comply with those DOE and AL orders applicable to cost-reimbursement contracts which may be unilaterally implemented by the CO.

<u>Document No.</u>	<u>Subject</u>
DOE Order 200.1	Information Management Program
DOE Order 231.1	Environment, Safety, and Health Program
DOE Order 414.1A	Quality Assurance
DOE Order 440.1A	Worker Protection Management for DOE Federal & Contractor Employees
DOE Order 450.4	Safety Management System Policy

DOE Order 452.2A	Safety of Nuclear Explosive Operations
DOE Order 460.1A	Packaging and Transportation Safety
DOE Order 470.1	Safeguards and Security Program
DOE Order 471.2A	Information Security
DOE Order 471.2-1B	Manual for Classified Matter Protection and Control
DOE Order 472.2	Protective Force Program
DOE Manual 473.2-1	Firearms Qualification Courses Manual
DOE Manual 473.2-2	Protective Force Manual
DOE Guide 5630.15	Training Approval Program
DOE Order 5632.1C	Protection and Control of Safeguards and Security Interests
DOE Manual 5632.1C-1	Protection and Control of Safeguards and Security Interests Manual

#### **H029 MODIFICATION AUTHORITY (AUG 2002)**

Notwithstanding any of the other provisions in this contract, the Contracting Officer shall be the only individual authorized to:

- (1) Accept nonconforming work;
- (2) Waive any requirement of this contract; or
- (3) Modify any terms or conditions of this contract.

#### **H030 CONDITIONAL PAYMENT OF FEE OR PROFIT-SAFEGUARDING RESTRICTED DATA AND OTHER CLASSIFIED INFORMATION**

(a) General.

- (1) The Government reserves the right to unilaterally insert into contracts awarded under this solicitation the final rule version of the DEAR Clause 952.204-XX Conditional Payment of Fee or Profit--Safeguarding Restricted Data and Other Classified Information, appropriately modified to pertain to task orders issued under the contract.
- (2) The payment of fee or profit (i.e., award fee, fixed fee, and incentive fee or profit) under the contract is dependent upon the contractor's compliance with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information (i.e., Formerly Restricted Data and National Security Information) including compliance with applicable law, regulation, and DOE directives. The term "contractor" as used in this clause to address failure to comply shall mean "contractor or contractor employee."
- (3) In addition to other remedies available to the Federal Government, if the contractor fails to comply with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information, the Contracting Officer may unilaterally reduce the amount of earned fee, fixed fee, or profit which is otherwise payable to the contractor under their specific task order in accordance with the terms and conditions of this clause.
- (4) Any reduction in the amount of fee or profit earned by the contractor will be determined by the severity of the contractor's failure to comply with contract terms and conditions relating to the safeguarding of Restricted data or other classified information pursuant to the degrees specified in paragraph (c) of this clause.

(b) Reduction Amount.



- (1) If it is found that the contractor has failed to comply with contract terms and conditions relating to the safeguarding of Restricted Data or other classified information, the contractor's earned or fixed fee, or profit may be reduced. Such reduction shall not be less than 51% nor greater than 100% of the total fee or profit earned for a first degree performance failure, not less than 26% nor greater than 50% for a second degree performance failure, and up to 25% for a third degree performance failure. The Contracting Officer may consider mitigating factors that may warrant a reduction below the specified range, including a determination that no reduction should be made. The Contracting Officer may also prorate the reduction to make it correlate to a shorter time period if the performance failure represents a single event or incident rather than a failure that continues over a period of time.
  - (2) For performance-based firm-fixed-price task orders involving the need for safeguarding of Restricted Data or other classified information, the Contracting Officer will at the time of task order award include negative monetary incentives in the task order for contractor violations relating to the safeguarding of Restricted Data and other classified information.
- (c) Safeguarding Restricted Data and Other Classified Information. The degrees of performance failures relating to the contractor's obligations under this contract for safeguarding of Restricted Data and other classified information are as follows:
- (1) First Degree: Performance failures that have been determined, in accordance with applicable DOE regulation or directive, to have resulted in, or that can reasonably be expected to result in, exceptionally grave damage to the national security. The following performance failures or performance failures of similar import will be considered first degree:
    - (i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating a risk of, loss, compromise, or unauthorized disclosure of Restricted Data or other classified information classified as Top Secret.
    - (ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Restricted Data, or other classified information, which is classified as Top Secret.
    - (iii) Failure to implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Restricted Data or other classified information classified as Top Secret.
  - (2) Second Degree: Performance failures that have been determined, in accordance with applicable DOE regulation or directive, to have actually resulted in, or that can reasonably be expected to result in, serious damage to the national security. The following performance failures or performance failures of similar import will be considered second degree:
    - (i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Restricted Data or other classified information which is classified as Secret.
    - (ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Restricted Data, or other classified information which is classified as Secret.
    - (iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Restricted Data or other classified information regardless of classification.



- (iv) Failure to implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Restricted Data or other classified information classified as Secret.
- (3) Third Degree: Performance failures that have been determined, in accordance with applicable DOE regulation or directive, to have actually resulted in, or that can reasonably be expected to result in, undue risk to the common defense and security. In addition, this category includes performance failures that result from a lack of contractor management and/or employee attention to the proper safeguarding of Restricted Data and other classified information. These performance failures may be indicators of future, more severe performance failures and/or conditions, and if identified and corrected early would prevent serious incidents. The following performance failures or performance failures of similar import will be considered third degree:
- (i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Restricted Data or other classified information, which is classified as Confidential.
  - (ii) Failure to promptly report alleged or suspected violations of laws, regulations, or directives pertaining to the safeguarding of Restricted Data or other classified information.
  - (iii) Failure to identify or execute corrective actions to mitigate or eliminate identified vulnerabilities and reduce residual risk relating to the protection of Restricted Data or other classified information in accordance with the contractor's Safeguards and Security Plan or other security plan, as applicable.
  - (iv) Contractor actions that result in performance failures which unto themselves pose minor risk, but when viewed in the aggregate indicate degradation in the integrity of the contractor's safeguards and security management system relating to the protection of Restricted Data and other classified information.

Contract Clauses in this section are from the FAR, Defense FAR Sup, Air Force FAR Sup, and the Air Force Materiel Command FAR Sup, and are current through the following updates:

Database Version: 5.4.x.000; Issued: 7/31/2003; Clauses: ; FAR: FAC 2001-14; DFAR: DCN20030620; DL.: DL 98-021; Class Deviations: CD 2003o0003; AFFAR: 2002 Edition; AFMCFAR: AFMCAC 02-01; AFAC: AFAC 2003-0501; IPN: 98-009

I. NOTICE: The following contract clauses pertinent to this section are hereby incorporated by reference:

**A. FEDERAL ACQUISITION REGULATION CONTRACT CLAUSES**

- 52.202-01 DEFINITIONS (DEC 2001)
- 52.203-03 GRATUITIES (APR 1984)
- 52.203-05 COVENANT AGAINST CONTINGENT FEES (APR 1984)
- 52.203-06 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (JUL 1995)
- 52.203-07 ANTI-KICKBACK PROCEDURES (JUL 1995)
- 52.203-08 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)
- 52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)
- 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JUN 1997)
- 52.204-04 PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER (AUG 2000)
- 52.209-06 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (JUL 1995)
- 52.215-02 AUDIT AND RECORDS -- NEGOTIATION (JUN 1999) - ALTERNATE I (JAN 1997)
- 52.215-08 ORDER OF PRECEDENCE--UNIFORM CONTRACT FORMAT (OCT 1997)
- 52.215-11 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA--MODIFICATIONS (OCT 1997)
- 52.215-13 SUBCONTRACTOR COST OR PRICING DATA--MODIFICATIONS (OCT 1997)
- 52.215-21 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA--MODIFICATIONS (OCT 1997)
- 52.215-21 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA--MODIFICATIONS (OCT 1997) - ALTERNATE III (OCT 1997)  
Alt III, Para (c), Submit the cost portion of the proposal via the following electronic media: '3.5" diskette as IBM PC compatible, Microsoft Excel (version 5.0 or 6.0)'
- 52.216-07 ALLOWABLE COST AND PAYMENT (FEB 2002)
- 52.216-14 ALLOWABLE COST AND PAYMENT -- FACILITIES USE (APR 1984)
- 52.216-18 ORDERING (OCT 1995)  
Para (a), Issued from date is 'date of award'  
Para (a), Issued through date is '5 years after date of award'
- 52.216-19 ORDER LIMITATIONS (OCT 1995)  
Para (a), Dollar amount or quantity '\$1,000.00'  
Para (b)(1), Dollar amount or quantity '\$20,000,000.00'  
Para (b)(2), Dollar amount or quantity '\$120,000,000.00'  
Para (b)(3), Number of days '2'  
Para (d), Number of days '7'
- 52.216-22 INDEFINITE QUANTITY (OCT 1995)  
Para (d), Date is '5 years after date of award'
- 52.219-04 NOTICE OF PRICE EVALUATION PREFERENCE FOR HUBZONE SMALL BUSINESS CONCERNS (JAN 1999)
- 52.219-08 UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 2000)



PART II - CONTRACT CLAUSES  
SECTION I - CONTRACT CLAUSES

- 52.219-09 SMALL BUSINESS SUBCONTRACTING PLAN (OCT 1999)  
52.222-01 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997)  
52.222-02 PAYMENT FOR OVERTIME PREMIUMS (JUL 1990)  
Para (a), Dollar amount is '\$250,000.00'  
52.222-03 CONVICT LABOR (AUG 1996)  
52.222-21 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)  
52.222-26 EQUAL OPPORTUNITY (APR 2002)  
52.222-35 EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (DEC 2001)  
52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)  
52.222-37 EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (DEC 2001)  
52.222-38 COMPLIANCE WITH VETERANS' EMPLOYMENT REPORTING REQUIREMENTS (DEC 2001)  
52.222-41 SERVICE CONTRACT ACT OF 1965, AS AMENDED (MAY 1989)  
52.222-42 STATEMENT OF EQUIVALENT RATES FOR FEDERAL HIRES (MAY 1989) e  
Employee Class and Monetary Wage - Fringe Benefits:  
'Secretary' GS-5  
Word Processor GS-5  
Supply Technician GS-5  
Armorer WG-10  
Munitions & Supply Specialist WG-10'  
52.222-47 SERVICE CONTRACT ACT (SCA) MINIMUM WAGES AND FRINGE BENEFITS (MAY 1989)  
Insert incumbent contractor name. 'Wackenhut Services, Inc.'  
Identify Union. 'None'  
52.223-03 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997)  
52.223-05 POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION (APR 1998)  
52.223-06 DRUG-FREE WORKPLACE (MAY 2001)  
52.223-14 TOXIC CHEMICAL RELEASE REPORTING (OCT 2000)  
52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUL 2000)  
52.227-01 AUTHORIZATION AND CONSENT (JUL 1995)  
52.227-02 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 1996)  
52.228-07 INSURANCE -- LIABILITY TO THIRD PERSONS (MAR 1996)  
52.229-10 STATE OF NEW MEXICO GROSS RECEIPTS AND COMPENSATING TAX (OCT 1988)  
Para (c), Agency name 'US Department of Energy'  
Para (g), Agency name 'US Department of Energy'  
Para (g), Agency name 'US Department of Energy'  
Para (g), Agency name 'US Department of Energy'  
52.230-02 COST ACCOUNTING STANDARDS (APR 1998)  
52.230-06 ADMINISTRATION OF COST ACCOUNTING STANDARDS (NOV 1999)  
52.232-09 LIMITATION ON WITHHOLDING OF PAYMENTS (APR 1984)  
52.232-17 INTEREST (JUN 1996)  
52.232-21 LIMITATION OF COST (FACILITIES) (APR 1984)  
52.232-22 LIMITATION OF FUNDS (APR 1984)  
52.232-23 ASSIGNMENT OF CLAIMS (JAN 1986)  
52.232-25 PROMPT PAYMENT (FEB 2002)  
52.232-33 PAYMENT BY ELECTRONIC FUNDS TRANSFER--CENTRAL CONTRACTOR REGISTRATION (MAY 1999)  
52.232-34 PAYMENT BY ELECTRONIC FUNDS TRANSFER--OTHER THAN CENTRAL CONTRACTOR REGISTRATION (MAY 1999)  
Para (b)(1) Date EFT information is required: 'No later than 15 days prior to the submission of the first request for payment'



PART II - CONTRACT CLAUSES  
SECTION I - CONTRACT CLAUSES

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- 52.233-01 DISPUTES (DEC 1998) - ALTERNATE I (DEC 1991)  
52.233-03 PROTEST AFTER AWARD (AUG 1996) - ALTERNATE I (JUN 1985)  
52.237-02 PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT AND VEGETATION (APR 1984)  
52.242-01 NOTICE OF INTENT TO DISALLOW COSTS (APR 1984)  
52.242-03 PENALTIES FOR UNALLOWABLE COSTS (MAY 2001)  
52.242-04 CERTIFICATION OF FINAL INDIRECT COSTS (JAN 1997)  
52.242-13 BANKRUPTCY (JUL 1995)  
52.243-02 CHANGES -- COST-REIMBURSEMENT (AUG 1987) - ALTERNATE I (APR 1984)  
52.243-02 CHANGES -- COST-REIMBURSEMENT (AUG 1987) - ALTERNATE IV (APR 1984)  
52.243-07 NOTIFICATION OF CHANGES (APR 1984)  
Para (b), Number of calendar days is '30 days'  
Para (d), Number of calendar days is '30 days'  
52.244-02 SUBCONTRACTS (AUG 1998) - ALTERNATE I (AUG 1998)  
Para (e), Contractor shall obtain the Contracting Officer's written consent before placing the following subcontracts: 'TBD'  
Para (k), the following subcontracts which were evaluated during negotiations: 'TBD'  
52.244-05 COMPETITION IN SUBCONTRACTING (DEC 1996)  
52.244-06 SUBCONTRACTS FOR COMMERCIAL ITEMS (DEC 2001)  
52.245-05 GOVERNMENT PROPERTY (COST-REIMBURSEMENT, TIME-AND-MATERIAL, OR LABOR-HOUR CONTRACTS) (DEVIATION) (JAN 1986)  
52.245-08 LIABILITY FOR THE FACILITIES (DEVIATION) (JAN 1997)  
52.245-09 USE AND CHARGES (DEVIATION) (APR 1984)  
52.245-11 GOVERNMENT PROPERTY (FACILITIES USE) (APR 1984)  
52.245-16 FACILITIES EQUIPMENT MODERNIZATION (APR 1985)  
52.246-25 LIMITATION OF LIABILITY -- SERVICES (FEB 1997)  
52.247-67 SUBMISSION OF COMMERCIAL TRANSPORTATION BILLS TO THE GENERAL SERVICES ADMINISTRATION FOR AUDIT (JUN 1997)  
52.248-01 VALUE ENGINEERING (FEB 2000)  
Para (m). Contract number. 'n/a'  
52.249-06 TERMINATION (COST-REIMBURSEMENT) (SEP 1996)  
52.249-13 FAILURE TO PERFORM (APR 1984)  
52.249-14 EXCUSABLE DELAYS (APR 1984)  
52.251-01 GOVERNMENT SUPPLY SOURCES (APR 1984) - ALTERNATE I (APR 1984)  
52.253-01 COMPUTER GENERATED FORMS (JAN 1991)

**II. NOTICE:** The following contract clauses pertinent to this section are hereby incorporated in full text:

**A. FEDERAL ACQUISITION REGULATION CONTRACT CLAUSES IN FULL TEXT**

**52.219-04 NOTICE OF PRICE EVALUATION PREFERENCE FOR HUBZONE SMALL BUSINESS CONCERNS (JAN 1999)**

(a) Definition. HUBZone small business concern, as used in this clause, means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

(b) Evaluation preference.

(1) Offers will be evaluated by adding a factor of 10 percent to the price of all offers, except--

(i) Offers from HUBZone small business concerns that have not waived the evaluation preference;

(ii) Otherwise successful offers from small business concerns;

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(iii) Otherwise successful offers of eligible products under the Trade Agreements Act when the dollar threshold for application of the Act is exceeded (see 25.402 of the Federal Acquisition Regulation (FAR)); and

(iv) Otherwise successful offers where application of the factor would be inconsistent with a Memorandum of Understanding or other international agreement with a foreign government.

(2) The factor of 10 percent shall be applied on a line item basis or to any group of items on which award may be made. Other evaluation factors described in the solicitation shall be applied before application of the factor.

(3) A concern that is both a HUBZone small business concern and a small disadvantaged business concern will receive the benefit of both the HUBZone small business price evaluation preference and the small disadvantaged business price evaluation adjustment (see FAR clause 52.219-23). Each applicable price evaluation preference or adjustment shall be calculated independently against an offeror's base offer. These individual preference amounts shall be added together to arrive at the total evaluated price for that offer.

(c) Waiver of evaluation preference. A HUBZone small business concern may elect to waive the evaluation preference, in which case the factor will be added to its offer for evaluation purposes. The agreements in paragraph (d) of this clause do not apply if the offeror has waived the evaluation preference.

Offeror elects to waive the evaluation preference.

(d) Agreement. A HUBZone small business concern agrees that in the performance of the contract, in the case of a contract for

(1) Services (except construction), at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern or employees of other HUBZone small business concerns;

(2) Supplies (other than procurement from a nonmanufacturer of such supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern or other HUBZone small business concerns;

(3) General construction, at least 15 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other HUBZone small business concerns; or

(4) Construction by special trade contractors, at least 25 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other HUBZone small business concerns.

(e) A HUBZone joint venture agrees that in the performance of the contract, the applicable percentage specified in paragraph (d) of this clause will be performed by the HUBZone small business participant or participants.

(f) A HUBZone small business concern nonmanufacturer agrees to furnish in performing this contract only end items manufactured or produced by HUBZone small business manufacturer concerns. This paragraph does not apply in connection with construction or service contracts.



**52.252-02 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)**

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es): <http://farsite.hill.af.mil/>

**52.252-06 AUTHORIZED DEVIATIONS IN CLAUSES (APR 1984)**

- (a) The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR Chapter 1) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the date of the clause.
- (b) The use in this solicitation or contract of any Department of Energy clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.

**B. OTHER CONTRACT CLAUSES IN FULL TEXT**

**952.203-70 WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (DEC 2000)**

- (a) The contractor shall comply with the requirements of "DOE Contractor Employee Protection Program" at 10 CFR part 708 for work performed on behalf of DOE directly related to activities at DOE-owned or leased sites.
- (b) The contractor shall insert or have inserted the substance of this clause, including this paragraph (b), in subcontracts at all tiers, for subcontracts involving work performed on behalf of DOE directly related to activities at DOE-owned or leased sites.

**952.204-70 CLASSIFICATION/DECLASSIFICATION (SEP 1997)**

- (a) In the performance of work under this contract, the contractor or subcontractor shall comply with all provisions of the Department of Energy's regulations and mandatory DOE directives which apply to work involving the classification and declassification of information, documents, or material. In this section, "information" means facts, data, or knowledge itself; "document" means the physical medium on or in which information is recorded; and "material" means a product or substance which contains or reveals information, regardless of its physical form or characteristics. Classified information is "Restricted Data" and "Formerly Restricted Data" (classified under the Atomic Energy Act of 1954, as amended) and "National Security Information" (classified under Executive Order 12958 or prior Executive Orders). The original decision to classify or declassify information is considered an inherently Governmental function. For this reason, only Government personnel may serve as original classifiers, i.e., Federal Government Original Classifiers. Other personnel (Government or contractor) may serve as derivative classifiers which involves making classification decisions based upon classification guidance which reflect decisions made by Federal Government Original Classifiers.
- (b) The contractor or subcontractor shall ensure that any document or material that may contain classified information is reviewed by either a Federal Government or a Contractor Derivative Classifier in accordance with classification regulations including mandatory DOE directives and classification/declassification guidance furnished to the contractor by the Department of Energy to determine whether it contains classified information prior to dissemination. For information which is not addressed in classification/declassification guidance, but whose sensitivity appears to warrant classification, the contractor or subcontractor shall ensure that such information is reviewed by a Federal Government Original Classifier.
- (c) In addition, the contractor or subcontractor shall ensure that existing classified documents (containing either Restricted Data or Formerly Restricted Data or National Security Information) which are in its possession or under its control are periodically reviewed by a Federal Government or Contractor Derivative Declassifier in accordance with classification regulations, mandatory DOE directives and classification/declassification guidance furnished to the contractor by the Department of Energy to



determine if the documents are no longer appropriately classified. Priorities for declassification review of classified documents shall be based on the degree of public and researcher interest and the likelihood of declassification upon review. Documents which no longer contain classified information are to be declassified. Declassified documents then shall be reviewed to determine if they are publicly releasable. Documents which are declassified and determined to be publicly releasable are to be made available to the public in order to maximize the public's access to as much Government information as possible while minimizing security costs.

(d) The contractor or subcontractor shall insert this clause in any subcontract which involves or may involve access to classified information.

**952.204-74 FOREIGN OWNERSHIP, CONTROL, OR INFLUENCE OVER CONTRACTOR (APR 1984)  
DEVIATION (APR 1999)**

(a) For purposes of this clause, subcontractor means any subcontractor at any tier and the term "contracting officer" shall mean DOE contracting officer. When this clause is included in a subcontract, the term "contractor" shall mean subcontractor and the term "contract" shall mean subcontract.

(b) The contractor shall immediately provide the contracting officer written notice of any changes in the extent and nature of FOCI over the contractor which would affect the information provided in the Certificate Pertaining to Foreign Interests and its supporting data. Further, notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice shall also be furnished concurrently to the contracting officer.

(c) In those cases where a contractor has changes involving FOCI, the DOE must determine whether the changes will pose an undue risk to the common defense and security. In making this determination, the Department shall consider proposals made by the contractor to avoid or mitigate foreign influences.

(d) If the contracting officer at any time determines that the contractor is, or is potentially, subject to FOCI, the contractor shall comply with such instructions as the contracting officer shall provide in writing to safeguard any classified information or special nuclear material.

(e) The contractor agrees to insert terms that conform substantially to the language of this clause including this paragraph (e) in all subcontracts under this contract that will require access authorizations for access to classified information or special nuclear material. Additionally, the contractor shall require such subcontractors to submit a completed SF328, to the DOE Office of Safeguards and Security (marked to identify the applicable prime contract). Such subcontracts or purchase orders shall not be awarded until the contractor is notified that the proposed subcontractors have been cleared. Information to be provided by a subcontractor pursuant to this clause may be submitted directly to the contracting officer.

(f) Information submitted by the contractor or any affected subcontractor as required pursuant to this clause shall be treated by DOE to the extent permitted by law, as business or financial information submitted in confidence to be used solely for purposes of evaluating FOCI.

(g) The requirements of this clause are in addition to the requirement that a contractor obtain and retain the employee security clearances required by the contract. This clause shall not operate as a limitation on DOE's rights, including its rights to terminate this contract.

(h) The contracting officer may terminate this contract for default either if the contractor fails to meet obligations imposed by this clause, e.g., provide the information required by this clause, comply with the contracting officer's instructions about safeguarding classified information, or make this clause applicable to subcontractors, or if, in the contracting officer's judgment, the contractor creates an FOCI situation in order to avoid performance or a termination for default. The contracting officer may terminate this contract for convenience if the contractor becomes subject to FOCI and for reasons other than avoidance of performance of the contract, cannot, or chooses not to, avoid or mitigate the FOCI problem.

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**952.208-70 PRINTING (APR 1994)**

The contractor shall not engage in, nor subcontract for, any printing (as that term is defined in Title I of the U.S. Government Printing and Binding Regulations in effect on the effective date of this contract) in connection with the performance of work under this contract. Provided, however, that performance of a requirement under this contract involving the duplication of less than 5,000 copies of a single unit, or no more than 25,000 units in the aggregate of multiple units, will not be deemed to be printing. A unit is defined as one sheet, size 8" by 11 inches one side only, one color. A requirement is defined as a single publication document.

(1) The term "printing" includes the following processes: composition, plate making, presswork, binding, microform publishing, or the end items produced by such processes.

(2) If fulfillment of the contract will necessitate reproduction in excess of the limits set forth above, the contractor shall notify the contracting officer in writing and obtain the contracting officer's approval prior to acquiring on DOE's behalf production, acquisition, and dissemination of printed matter. Such printing must be obtained from the Government Printing Office (GPO), a contract source designated by GPO or a Joint Committee on Printing authorized federal printing plant.

(3) Printing services not obtained in compliance with this guidance will result in the cost of such printing being disallowed.

(4) The Contractor will include in each of his subcontracts hereunder a provision substantially the same as this clause including this paragraph (4).

**952.209-72 ORGANIZATIONAL CONFLICTS OF INTEREST (JUN 1997)**

(a) *Purpose.* The purpose of this clause is to ensure that the contractor (1) is not biased because of its financial, contractual, organizational, or other interests which relate to the work under this contract, and (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of this contract.

(b) *Scope.* The restrictions described herein shall apply to performance or participation by the contractor and any of its affiliates or their successors in interest (hereinafter collectively referred to as "contractor") in the activities covered by this clause as a prime contractor, subcontractor, cosponsor, joint venturer, consultant, or in any similar capacity. For the purpose of this clause, affiliation occurs when a business concern is controlled by or has the power to control another or when a third party has the power to control both.

**(1) Use of Contractor's Work Product.**

(i) The contractor shall be ineligible to participate in any capacity in Department contracts, subcontracts, or proposals therefor (solicited and unsolicited) which stem directly from the contractor's performance of work under this contract for a period of (Contracting Officer see DEAR 9.507-2 and enter specific term) years after the completion of this contract. Furthermore, unless so directed in writing by the contracting officer, the Contractor shall not perform any advisory and assistance services work under this contract on any of its products or services or the products or services of another firm if the contractor is or has been substantially involved in their development or marketing. Nothing in this subparagraph shall preclude the contractor from competing for follow-on contracts for advisory and assistance services.

(ii) If, under this contract, the contractor prepares a complete or essentially complete performance work statement or specifications to be used in competitive acquisitions, the contractor shall be ineligible to perform or participate in any capacity in any contractual effort which is based on such performance work statement or specifications. The contractor shall not incorporate its products or services in such performance work statement or specifications unless so directed in writing by the contracting officer, in which case the restriction in this subparagraph shall not apply.

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(iii) Nothing in this paragraph shall preclude the contractor from offering or selling its standard and commercial items to the Government.

(2) *Access to and use of information.*

(i) If the contractor, in the performance of this contract, obtains access to information, such as Department plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or data which has not been released or otherwise made available to the public, the contractor agrees that without prior written approval of the contracting officer it shall not:

(A) use such information for any private purpose unless the information has been released or otherwise made available to the public;

(B) compete for work for the Department based on such information for a period of six (6) months after either the completion of this contract or until such information is released or otherwise made available to the public, whichever is first;

(C) submit an unsolicited proposal to the Government which is based on such information until one year after such information is released or otherwise made available to the public; and

(D) release such information unless such information has previously been released or otherwise made available to the public by the Department.

(ii) In addition, the contractor agrees that to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or other confidential or privileged technical, business, or financial information under this contract, it shall treat such information in accordance with any restrictions imposed on such information.

(iii) The contractor may use technical data it first produces under this contract for its private purposes consistent with paragraphs (b)(2)(i) (A) and (D) of this clause and the patent, rights in data, and security provisions of this contract.

(c) *Disclosure after award.*

(1) The contractor agrees that, if changes, including additions, to the facts disclosed by it prior to award of this contract, occur during the performance of this contract, it shall make an immediate and full disclosure of such changes in writing to the contracting officer. Such disclosure may include a description of any action which the contractor has taken or proposes to take to avoid, neutralize, or mitigate any resulting conflict of interest. The Department may, however, terminate the contract for convenience if it deems such termination to be in the best interest of the Government.

(2) In the event that the contractor was aware of facts required to be disclosed or the existence of an actual or potential organizational conflict of interest and did not disclose such facts or such conflict of interest to the contracting officer, DOE may terminate this contract for default.

(d) *Remedies.* For breach of any of the above restrictions or for nondisclosure or misrepresentation of any facts required to be disclosed concerning this contract, including the existence of an actual or potential organizational conflict of interest at the time of or after award, the Government may terminate the contract for default, disqualify the contractor from subsequent related contractual efforts, and pursue such other remedies as may be permitted by law or this contract.

(e) *Waiver.* Requests for waiver under this clause shall be directed in writing to the contracting officer and shall include a full description of the requested waiver and the reasons in support thereof. If it is determined to be in the best interests of the Government, the contracting officer may grant such a waiver in writing.



(f) *Subcontracts.*

(1) The contractor shall include a clause, substantially similar to this clause, including this paragraph (f), in subcontracts expected to exceed the simplified acquisition threshold determined in accordance with FAR Part 13 and involving the performance of advisory and assistance services as that term is defined at FAR 37.201. The terms "contract," "contractor," and "contracting officer" shall be appropriately modified to preserve the Government's rights.

(2) Prior to the award under this contract of any such subcontracts for advisory and assistance services, the contractor shall obtain from the proposed subcontractor or consultant the disclosure required by DEAR 909.507-1, and shall determine in writing whether the interests disclosed present an actual or significant potential for an organizational conflict of interest. Where an actual or significant potential organizational conflict of interest is identified, the contractor shall take actions to avoid, neutralize, or mitigate the organizational conflict to the satisfaction of the contractor. If the conflict cannot be avoided or neutralized, the contractor must obtain the approval of the DOE contracting officer prior to entering into the subcontract.

**952.211-71 PRIORITIES AND ALLOCATIONS (ATOMIC ENERGY) (JUN 1996)**

The Contractor shall follow the provisions of Defense Priorities and Allocations System (DPAS) regulation (15 CFR Part 700) in obtaining controlled materials and other products and materials needed to fill this contract.

**952.215-70 - KEY PERSONNEL (DEC 2000)**

(a) The personnel listed below or elsewhere in this contract [SEE Section H, Paragraph H012] are considered essential to the work being performed under this contract. Before removing, replacing, or diverting any of the listed or specified personnel, the Contractor must:

(1) Notify the Contracting Officer reasonably in advance;

(2) Submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this contract; and

(3) Obtain the Contracting Officer's written approval. Notwithstanding the foregoing, if the Contractor deems immediate removal or suspension of any member of its management team is necessary to fulfill its obligation to maintain satisfactory standards of employee competency, conduct, and integrity, the Contractor may remove or suspend such person at once, although the Contractor must notify Contracting Officer prior to or concurrently with such action.

(b) The list of personnel may, with the consent of the contracting parties, be amended from time to time during the course of the contract to add or delete personnel.

**52.222-35 AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (APR 1998) AS MODIFIED BY DOE HQ 99-03 (MAY 1999)**

(a) Definitions. As used in this clause--

"All employment openings" includes all positions except executive and top management, those positions that will be filled from within the contractor's organization, and positions lasting 3 days or less. This term includes full-time employment, temporary employment of more than 3 days' duration, and part-time employment.

"Appropriate office of the State employment service system," means the local office of the Federal-State national system of public employment offices with assigned responsibility to serve the area where the employment opening is to be filled, including the District of Columbia, Guam, the Commonwealth of Puerto Rico, and the Virgin Islands.

"Positions that will be filled from within the Contractor's organization" means employment openings for which no consideration will be given to persons outside the Contractor's organization (including any



affiliates, subsidiaries, and parent companies) and includes any openings that the Contractor proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization.

"Veteran of the Vietnam era means a person who--

(1) Served on active duty for a period of more than 180 days, any part of which occurred between August 5, 1964, and May 7, 1975, and was discharged or released therefrom with other than a dishonorable discharge; or

(2) Was discharged or released from active duty for a service-connected disability if any part of such active duty was performed between August 5, 1964 and May 7, 1975.

(b) General.

(1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against the individual because the individual is a disabled veteran or a veteran of the Vietnam era. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled veterans and veterans of the Vietnam era without discrimination based upon their disability or veterans' status in all employment practices such as --

- (i) Employment;
- (ii) Upgrading;
- (iii) Demotion or transfer;
- (iv) Recruitment;
- (v) Advertising;
- (vi) Layoff or termination;
- (vii) Rates of pay or other forms of compensation; and
- (viii) Selection for training, including apprenticeship.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended.

(c) Listing openings.

(1) The Contractor agrees to list all employment openings existing at contract award or occurring during contract performance, at an appropriate office of the State employment service system in the locality where the opening occurs. These openings include those occurring at any Contractor facility, including one not connected with performing this contract. An independent corporate affiliate is exempt from this requirement.

(2) State and local government agencies holding Federal contracts of \$25,000 or more shall also list all employment openings with the appropriate office of the State employment service.

(3) The listing of employment openings with the State employment service system is required at least concurrently with using any other recruitment source or effort and involves the obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.

(4) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State employment service system, in each State where it has establishments, of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State system, it need not advise the State system of subsequent contracts. The Contractor may advise the State system when it is no longer bound by this contract clause.

(d) Applicability.

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(1) This clause does not apply to the listing of employment openings that occur and are filled outside the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(2) The terms of paragraph (c) above of this clause do not apply to openings that the Contractor proposes to fill from within its own organization or under a customary and traditional employer-union hiring arrangement. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of its own organization or employer-union arrangement for that opening.

(e) Postings.

(1) The Contractor agrees to post employment notices stating

(i) The Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era, and

(ii) The rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary), and provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of the Act, and is committed to take affirmative action to employ, and advance in employment, qualified disabled veterans and veterans of the Vietnam era.

(f) Noncompliance. If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(g) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order of \$25,000 or more unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

**952.223-71 INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION (JUN 1997)**

(a) For the purposes of this clause,

(1) Safety encompasses environment, safety and health, including pollution prevention and waste minimization; and

(2) Employees include subcontractor employees.

(b) In performing work under this contract, the contractor shall perform work safely, in a manner that ensures adequate protection for employees, the public, and the environment, and shall be accountable for the safe performance of work. The contractor shall exercise a degree of care commensurate with the work and the associated hazards. The contractor shall ensure that management of environment, safety and health (ES&H) functions and activities becomes an integral but visible part of the contractor's work planning and execution processes. The contractor shall, in the performance of work, ensure that:

(1) Line management is responsible for the protection of employees, the public, and the environment. Line management includes those contractor and subcontractor employees managing or supervising employees performing work.



- (2) Clear and unambiguous lines of authority and responsibility for ensuring ES&H are established and maintained at all organizational levels.
  - (3) Personnel possess the experience, knowledge, skills, and abilities that are necessary to discharge their responsibilities.
  - (4) Resources are effectively allocated to address ES&H, programmatic, and operational considerations. Protecting employees, the public, and the environment is a priority whenever activities are planned and performed.
  - (5) Before work is performed, the associated hazards are evaluated and an agreed-upon set of ES&H standards and requirements are established which, if properly implemented, provide adequate assurance that employees, the public, and the environment are protected from adverse consequences.
  - (6) Administrative and engineering controls to prevent and mitigate hazards are tailored to the work being performed and associated hazards. Emphasis should be on designing the work and/or controls to reduce or eliminate the hazards and to prevent accidents and unplanned releases and exposures.
  - (7) The conditions and requirements to be satisfied for operations to be initiated and conducted are established and agreed-upon by DOE and the contractor. These agreed-upon conditions and requirements are requirements of the contract and binding upon the contractor. The extent of documentation and level of authority for agreement shall be tailored to the complexity and hazards associated with the work and shall be established in a Safety Management System.
- (c) The contractor shall manage and perform work in accordance with a documented Safety Management System (System) that fulfills all conditions in paragraph (b) of this clause at a minimum. Documentation of the System shall describe how the contractor will:
- (1) Define the scope of work;
  - (2) Identify and analyze hazards associated with the work;
  - (3) Develop and implement hazard controls;
  - (4) Perform work within controls; and
  - (5) Provide feedback on adequacy of controls and continue to improve safety management.
- (d) The System shall describe how the contractor will establish, document, and implement safety performance objectives, performance measures, and commitments in response to DOE program and budget execution guidance while maintaining the integrity of the System. The System shall also describe how the contractor will measure system effectiveness.
- (e) The contractor shall submit to the contracting officer documentation of its System for review and approval. Dates for submittal, discussions, and revisions to the System will be established by the contracting officer. Guidance on the preparation, content, review, and approval of the System will be provided by the contracting officer. On an annual basis, the contractor shall review and update, for DOE approval, its safety performance objectives, performance measures, and commitments consistent with and in response to DOE's program and budget execution guidance and direction. Resources shall be identified and allocated to meet the safety objectives and performance commitments as well as maintain the integrity of the entire System. Accordingly, the System shall be integrated with the contractor's business processes for work planning, budgeting, authorization, execution, and change control.
- (f) The contractor shall comply with, and assist the Department of Energy in complying with, ES&H requirements of all applicable laws and regulations, and applicable directives identified in the clause of this contract on Laws, Regulations, and DOE Directives. The contractor shall cooperate with Federal and non-Federal agencies having jurisdiction over ES&H matters under this contract.
- (g) The contractor shall promptly evaluate and resolve any noncompliance with applicable ES&H requirements and the System. If the contractor fails to provide resolution or if, at any time, the contractor's



acts or failure to act causes substantial harm or an imminent danger to the environment or health and safety of employees or the public, the contracting officer may issue an order stopping work in whole or in part. Any stop work order issued by a contracting officer under this clause (or issued by the contractor to a subcontractor in accordance with paragraph (i) of this clause) shall be without prejudice to any other legal or contractual rights of the Government. In the event that the contracting officer issues a stop work order, an order authorizing the resumption of the work may be issued at the discretion of the contracting officer. The contractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this clause.

(h) The contractor is responsible for compliance with the ES&H requirements applicable to this contract regardless of the performer of the work.

(i) The contractor shall include a clause substantially the same as this clause in subcontracts involving complex or hazardous work on site at a DOE-owned or -leased facility. Such subcontracts shall provide for the right to stop work under the conditions described in paragraph (g) of this clause. Depending on the complexity and hazards associated with the work, the contractor may require that the subcontractor submit a Safety Management System for the contractor's review and approval.

**952.223-75 PRESERVATION OF INDIVIDUAL OCCUPATIONAL RADIATION EXPOSURE RECORDS (APR 1994)**

Individual occupational radiation exposure records generated in the performance of work under this contract shall be subject to inspection by DOE and shall be preserved by the contractor until disposal is authorized by DOE or at the option of the contractor delivered to DOE upon completion or termination of the contract. If the contractor exercises the foregoing option, title to such records shall vest in DOE upon delivery.

**952.224-70 PAPERWORK REDUCTION ACT (APR 1994) (JUN 2002)**

(a) In the event that it subsequently becomes a contractual requirement to collect or record information calling either for answer to identical questions from 10 or more persons other than Federal employees, or information from Federal employees which is to be used for statistical compilations of general public interest, the Paperwork Reduction Act will apply to this contract. No plan, questionnaire, interview guide, or other similar device for collecting information (whether repetitive or single-time) may be used without first obtaining clearance from the Office of Management and Budget (OMB).

(b) The contractor shall request the required OMB clearance from the contracting officer before expending any funds or making public contacts for the collection of data. The authority to expend funds and to proceed with the collection of data shall be in writing by the contracting officer. The contractor must plan at least 90 days for OMB clearance. Excessive delay caused by the Government which arises out of causes beyond the control and without the fault or negligence of the contractor will be considered in accordance with the clause entitled "Excusable Delays," if such clause is applicable. If not, the period of performance may be extended pursuant to this clause if approved by the contracting officer.

**952.227-11 PATENT RIGHTS-RETENTION BY THE CONTRACTOR (SHORT FORM) (FEB 1995)**

(a) Definitions.

(1) "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.).

(2) "Made" when used in relation to any invention means the conception of first actual reduction to practice of such invention.



(3) "Nonprofit organization" means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(4) "Practical application" means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(5) "Small business firm" means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

(6) "Subject invention" means any invention of the contractor conceived or first actually reduced to practice in the performance of work under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

(7) "Agency licensing regulations" and "agency regulations concerning the licensing of Government-owned inventions" mean the Department of Energy patent licensing regulations at 10 CFR Part 781.

(b) Allocation of principal rights. The Contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(c) Invention disclosure, election of title, and filing of patent application by Contractor.

(1) The Contractor will disclose each subject invention to the Department of Energy (DOE) within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters. The disclosure to DOE shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the DOE, the Contractor will promptly notify that agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor.

(2) The Contractor will elect in writing whether or not to retain title to any such invention by notifying DOE within 2 years of disclosure to DOE. However, in any case where publication, on sale or public use has initiated the 1-year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by DOE to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Contractor will file its initial patent application on a subject invention to which it elects to retain title within 1 year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Contractor will file patent applications in additional countries or international patent offices within either 10 months of the corresponding initial patent application or 6 months from the date permission is granted.



by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure, election, and filing under subparagraphs (c)(1), (2), and (3) of this clause may, at the discretion of the agency, be granted.

(d) Conditions when the Government may obtain title. The Contractor will convey to the Federal agency, upon written request, title to any subject invention--

(1) If the Contractor fails to disclose or elect title to the subject invention within the times specified in paragraph (c) of this clause, or elects not to retain title; provided, that DOE may only request title within 60 days after learning of the failure of the Contractor to disclose or elect within the specified times. (2) In those countries in which the Contractor fails to file patent applications within the times specified in paragraph (c) of this clause; provided, however, that if the Contractor has filed a patent application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of the Federal agency, the Contractor shall continue to retain title in that country. (3) In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(e) Minimum rights to Contractor and protection of the Contractor right to file.

(1) The Contractor will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Contractor fails to disclose the invention within the times specified in paragraph (c) of this clause. The Contractor's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the Federal agency, except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR Part 404 and agency licensing regulations. This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of DOE to the extent the Contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country. (3) Before revocation or modification of the license, DOE will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed 30 days (or such other time as may be authorized by DOE for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable regulations in 37 CFR Part 404 and agency regulations concerning the licensing of Government owned inventions, any decision concerning the revocation or modification of the license.

(f) Contractor action to protect the Government's interest.

(1) The Contractor agrees to execute or to have executed and promptly deliver to DOE all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the Contractor elects to retain title, and (ii) convey title to DOE when requested under paragraph (d) of this clause and to enable the government to obtain patent protection throughout the world in that subject invention.

(2) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made

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under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (c)(1) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The Contractor will notify DOE of any decision not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.

(4) The Contractor agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with Government support under (identify the contract) awarded by the United States Department of Energy. The Government has certain rights in the invention."

(g) Subcontracts.

(1) The Contractor will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or domestic nonprofit organization. The subcontractor will retain all rights provided for the Contractor in this clause, and the Contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) The contractor shall include in all other subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work the patent rights clause at 952.227-13.

(3) In the case of subcontracts, at any tier, DOE, subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

(h) Reporting on utilization of subject inventions. The Contractor agrees to submit, on request, periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received, by the Contractor, and such other data and information as DOE may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by DOE in connection with any march-in proceeding undertaken by that agency in accordance with paragraph (j) of this clause. As required by 35 U.S.C. 202(c)(5), DOE agrees it will not disclose such information to persons outside the Government without permission of the Contractor.

(i) Preference for United States industry. Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any product embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by DOE upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) March-in rights. The Contractor agrees that, with respect to any subject invention in which it has acquired title, DOE has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency to require the Contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants,

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upon terms that are reasonable under the circumstances, and, if the Contractor, assignee, or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if DOE determines that—

(1) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) Special provisions for contracts with nonprofit organizations. If the Contractor is a nonprofit organization, it agrees that—

(1) Rights to a subject invention in the United States may not be assigned without the approval of the Federal agency, except where such assignment is made to an organization which has as one of its primary functions the management of inventions; provided, that such assignee will be subject to the same provisions as the Contractor;

(2) The Contractor will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when DOE deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the Contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions will be utilized for the support of scientific research or education; and

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and that it will give a preference to a small business firm when licensing a subject invention if the Contractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the Contractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the contractor. However, the Contractor agrees that the Secretary of Commerce may review the Contractor's licensing program and decisions regarding small business applicants, and the Contractor will negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when that Secretary's review discloses that the Contractor could take reasonable steps to more effectively implement the requirements of this subparagraph (k)(4).

(l) Communications.

(1) The contractor shall direct any notification, disclosure, or request to DOE provided for in this clause to the DOE patent counsel assisting the DOE contracting activity, with a copy of the communication to the Contracting Officer.

(2) Each exercise of discretion or decision provided for in this clause, except subparagraph (k)(4), is reserved for the DOE Patent Counsel and is not a claim or dispute and is not subject to the Contract Disputes Act of 1978.

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(3) Upon request of the DOE Patent Counsel or the contracting officer, the contractor shall provide any or all of the following:

(i) a copy of the patent application, filing date, serial number and title, patent number, and issue date for any subject invention in any country in which the contractor has applied for a patent;

(ii) a report, not more often than annually, summarizing all subject inventions which were disclosed to DOE individually during the reporting period specified; or

(iii) a report, prior to closeout of the contract, listing all subject inventions or stating that there were none.

**952.231-71 INSURANCE-LITIGATION AND CLAIMS (APR 2002)**

(a) The contractor may, with the prior written authorization of the contracting officer, and shall, upon the request of the Government, initiate litigation against third parties, including proceedings before administrative agencies, in connection with this contract. The contractor shall proceed with such litigation in good faith and as directed from time to time by the contracting officer.

(b) The contractor shall give the contracting officer immediate notice in writing of any legal proceeding, including any proceeding before an administrative agency, filed against the contractor arising out of the performance of this contract. Except as otherwise directed by the contracting officer, in writing, the contractor shall furnish immediately to the contracting officer copies of all pertinent papers received by the contractor with respect to such action. The contractor, with the prior written authorization of the contracting officer, shall proceed with such litigation in good faith and as directed from time to time by the contracting officer.

(c)

(1) Except as provided in paragraph (c)(2) of this clause, the contractor shall procure and maintain such bonds and insurance as required by law or approved in writing by the contracting officer.

(2) The contractor may, with the approval of the contracting officer, maintain a self-insurance program; provided that, with respect to workers' compensation, the contractor is qualified pursuant to statutory authority.

(3) All bonds and insurance required by this clause shall be in a form and amount and for those periods as the contracting officer may require or approve and with sureties and insurers approved by the contracting officer.

(d) The contractor agrees to submit for the contracting officer's approval, to the extent and in the manner required by the contracting officer, any other bonds and insurance that are maintained by the contractor in connection with the performance of this contract and for which the contractor seeks reimbursement. If an insurance cost (whether a premium for commercial insurance or related to self-insurance) includes a portion covering costs made unallowable elsewhere in the contract, and the share of the cost for coverage for the unallowable cost is determinable, the portion of the cost that is otherwise an allowable cost under this contract is reimbursable to the extent determined by the contracting officer.

(e) Except as provided in paragraphs (g) and (h) of this clause, or specifically disallowed elsewhere in this contract, the contractor shall be reimbursed—

(1) For that portion of the reasonable cost of bonds and insurance allocable to this contract required in accordance with contract terms or approved under this clause, and

(2) For liabilities (and reasonable expenses incidental to such liabilities, including litigation costs) to third persons not compensated by insurance or otherwise without regard to and as an exception to the limitation of cost or limitation of funds clause of this contract.

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(f) The Government's liability under paragraph (e) of this clause is subject to the availability of appropriated funds. Nothing in this contract shall be construed as implying that the Congress will, at a later date, appropriate funds sufficient to meet deficiencies.

(g) Notwithstanding any other provision of this contract, the contractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities, including litigation costs, counsel fees, judgment and settlements)—

(1) Which are otherwise unallowable by law or the provisions of this contract; or

(2) For which the contractor has failed to insure or to maintain insurance as required by law, this contract, or by the written direction of the contracting officer.

(h) In addition to the cost reimbursement limitations contained in 48 CFR part 31, as supplemented in 48 CFR part 931, and notwithstanding any other provision of this contract, the contractor's liabilities to third persons, including employees but excluding costs incidental to workers' compensation actions (and any expenses incidental to such liabilities, including litigation costs, counsel fees, judgments and settlements), shall not be reimbursed if such liabilities were caused by contractor managerial personnel's--

(1) Willful misconduct,

(2) Lack of good faith, or

(3) Failure to exercise prudent business judgment, which means failure to act in the same manner as a prudent person in the conduct of competitive business; or, in the case of a non-profit educational institution, failure to act in the manner that a prudent person would under the circumstances prevailing at the time the decision to incur the cost is made.

(i) The burden of proof shall be upon the contractor to establish that costs covered by paragraph (h) of this clause are allowable and reasonable if, after an initial review of the facts, the contracting officer challenges a specific cost or informs the contractor that there is reason to believe that the cost results from willful misconduct, lack of good faith, or failure to exercise prudent business judgment by contractor managerial personnel.

(j)

(1) All litigation costs, including counsel fees, judgments and settlements shall be differentiated and accounted for by the contractor so as to be separately identifiable. If the contracting officer provisionally disallows such costs, then the contractor may not use funds advanced by DOE under the contract to finance the litigation.

(2) Punitive damages are not allowable unless the act or failure to act which gave rise to the liability resulted from compliance with specific terms and conditions of the contract or written instructions from the contracting officer.

(3) The portion of the cost of insurance obtained by the contractor that is allocable to coverage of liabilities referred to in paragraph (g)(1) of this clause is not allowable.

(4) The term "contractor's managerial personnel" is defined in the Property clause in this contract.

(k) The contractor may at its own expense and not as an allowable cost procure for its own protection insurance to compensate the contractor for any unallowable or unreimbursable costs incurred in connection with contract performance.

(l) If any suit or action is filed or any claim is made against the contractor, the cost and expense of which may be reimbursable to the contractor under this contract, and the risk of which is then uninsured or is insured for less than the amount claimed, the contractor shall—

(1) Immediately notify the contracting officer and promptly furnish copies of all pertinent papers received;

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(2) Authorize Department representatives to collaborate with: in-house or DOE-approved outside counsel in settling or defending the claim; or counsel for the insurance carrier in settling or defending the claim if the amount of the liability claimed exceeds the amount of coverage, unless precluded by the terms of the insurance contract; and

(3) Authorize Department representatives to settle the claim or to defend or represent the contractor in and/or to take charge of any litigation, if required by the Department, if the liability is not insured or covered by bond. In any action against more than one Department contractor, the Department may require the contractor to be represented by common counsel. Counsel for the contractor may, at the contractor's own expense, be associated with the Department representatives in any such claim or litigation.

#### 952.237-70 COLLECTIVE BARGAINING AGREEMENTS--PROTECTIVE SERVICES (AUG 1993)

When negotiating collective bargaining agreements applicable to the work force under this contract, the Contractor shall use its best efforts to ensure such agreements contain provisions designed to assure continuity of services. All such agreements entered into during the contract period of performance should provide the grievances and disputes involving the interpretation or application of the agreement will be settled without resorting to strike, lockout, or other interruption of normal operations. For this purpose, each collective bargaining agreement should provide an effective grievance procedure with arbitration as its final step, unless the parties mutually agree upon some other method of assuring continuity of operations. As part of such agreements, management and labor should agree to cooperate fully with the Federal Mediation and Conciliation Service. The contractor shall include the substance of this clause in any subcontracts for protective services.

#### 952.242-70 - TECHNICAL DIRECTION (DEC 2000)

(a) Performance of the work under this contract shall be subject to the technical direction of the DOE Contracting Officer's Representative (COR). The term "technical direction" is defined to include, without limitation:

(1) Providing direction to the contractor that redirects contract effort, shift work emphasis between work areas or tasks, require pursuit of certain lines of inquiry, fill in details, or otherwise serve to accomplish the contractual Performance Work Statement.

(2) Providing written information to the contractor that assists in interpreting drawings, specifications, or technical portions of the work description.

(3) Reviewing and, where required by the contract, approving, technical reports, drawings, specifications, and technical information to be delivered by the contractor to the Government.

(b) The contractor will receive a copy of the written COR designation from the contracting officer. It will specify the extent of the COR's authority to act on behalf of the contracting officer.

(c) Technical direction must be within the scope of work stated in the contract. The COR does not have the authority to, and may not, issue any technical direction that:

(1) Constitutes an assignment of additional work outside the Performance Work Statement;

(2) Constitutes a change as defined in the contract clause entitled "Changes;"

(3) In any manner causes an increase or decrease in the total estimated contract cost, the fee (if any), or the time required for contract performance;

(4) Changes any of the expressed terms, conditions or specifications of the contract; or

(5) Interferes with the contractor's right to perform the terms and conditions of the contract.

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(d) All technical direction shall be issued in writing by the COR.

(e) The contractor must proceed promptly with the performance of technical direction duly issued by the COR in the manner prescribed by this clause and within its authority under the provisions of this clause. If, in the opinion of the contractor, any instruction or direction by the COR falls within one of the categories defined in (c)(1) through (c)(5) of this clause, the contractor must not proceed and must notify the Contracting Officer in writing within five (5) working days after receipt of any such instruction or direction and must request the Contracting Officer to modify the contract accordingly. Upon receiving the notification from the contractor, the Contracting Officer must:

(1) Advise the contractor in writing within thirty (30) days after receipt of the contractor's letter that the technical direction is within the scope of the contract effort and does not constitute a change under the Changes clause of the contract;

(2) Advise the contractor in writing within a reasonable time that the Government will issue a written change order; or

(3) Advise the contractor in writing within a reasonable time not to proceed with the instruction or direction of the COR.

(f) A failure of the contractor and Contracting Officer either to agree that the technical direction is within the scope of the contract or to agree upon the contract action to be taken with respect to the technical direction will be subject to the provisions of the clause entitled "Disputes."

**52.245-5 GOVERNMENT PROPERTY (COST REIMBURSEMENT, TIME-AND-MATERIAL, OR LABOR-HOUR CONTRACTS) (AS MODIFIED BY 952.245-5) (JAN 1986)**

(a) Government-furnished property.

(1) The term "Contractor's managerial personnel," as used in paragraph (g) of this clause, means any of the Contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of--

(i) All or substantially all of the Contractor's business;

(ii) All or substantially all of the Contractor's operation at any one plant, or separate location at which the contract is being performed; or

(iii) A separate and complete major industrial operation connected with performing this contract.

(2) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the Government-furnished property described in the Schedule or specifications, together with such related data and information as the Contractor may request and as may be reasonably required for the intended use of the property (hereinafter referred to as "Government-furnished property").

(3) The delivery or performance dates for this contract are based upon the expectation that Government-furnished property suitable for use will be delivered to the Contractor at the times states in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet the contract's delivery or performance dates.

(4) If Government-furnished property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt, notify the Contracting Officer, detailing the facts, and, as directed by the Contracting Officer and at Government expense, either effect repairs or modification or return or otherwise dispose of the property. After completing the directed action and upon written request of the Contractor, the Contracting Officer shall make an equitable adjustment as provided in paragraph (h) of this clause.



(5) If Government-furnished property is not delivered to the Contractor by the required time or times, the Contracting Officer shall, upon the Contractor's timely written request, make a determination of the delay, if any, caused the Contractor and shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(b) Changes in Government-furnished property.

(1) The Contracting Officer may, by written notice, (i) decrease the Government-furnished property provided or to be provided under this contract or (ii) substitute other Government-furnished property for the property to be provided by the Government or to be acquired by the Contractor for the Government under this contract. The Contractor shall promptly take such action as the Contracting Officer may direct regarding the removal, shipment, or disposal of the property covered by this notice.

(2) Upon the Contractor's written request, the Contracting Officer shall make an equitable adjustment to the contract in accordance with paragraph (h) of this clause, if the Government has agreed in the Schedule to make such property available for performing this contract and there is any—

- (i) Decrease or substitution in this property pursuant to subparagraph (b)(1) above; or
- (ii) Withdrawal of authority to use property, if provided under any other contract or lease.

(c) Title.

(1) The Government shall retain title to all Government-furnished property.

(2) Title to all property purchased by the Contractor for which the Contractor is entitled to be reimbursed as a direct item of cost under this contract shall pass to and vest in the Government upon the vendor's delivery of such property.

(3) Title to all other property, the cost of which is reimbursable to the Contractor, shall pass to and vest in the Government upon—

- (i) Issuance of the property for use in contract performance;
- (ii) Commencement of processing of the property or use in contract performance; or
- (iii) Reimbursement of the cost of the property by the Government, whichever occurs

first.

(4) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this clause. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

(d) Use of Government property.

The Government property shall be used only for performing this contract, unless otherwise provided in this contract or approved by the Contracting Officer.

(e) Property administration.

(1) The Contractor shall be responsible and accountable for all Government property provided under this contract and shall comply with Federal Acquisition Regulation (FAR) Subpart 45.5 and DOE Acquisition Regulation Subpart 945.5 as in effect on the date of this contract.

(2) The Contractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound business practice and the applicable provisions of FAR Subpart 45.5 and DOE Acquisition Regulation Subpart 945.5.

(3) If damage occurs to Government property, the risk of which has been assumed by the Government under this contract, the Government shall replace the items or the Contractor shall make such repairs as the Government directs. However, if the Contractor cannot effect such repairs within the time required, the Contractor shall dispose of the property as directed by the Contracting Officer. When any property for which the Government is responsible is replaced or repaired, the Contracting Officer shall make equitable adjustment in accordance with paragraph (h) of this clause.



(f) Access.

The Government and all its designees shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.

(g) Limited risk of loss.

(1) The Contractor shall not be liable for loss or destruction of, or damage to, the Government property provided under this contract or for expenses incidental to such loss, destruction, or damage, except as provided in subparagraphs (2) and (3) below.

(2) The Contractor shall be responsible for loss or destruction of, or damage to, the Government property provided under this contract (including expenses incidental to such loss, destruction, or damage)--

(i) That results from a risk expressly required to be insured under this contract, but only to the extent of the insurance required to be purchased and maintained or to the extent of insurance actually purchased and maintained, whichever is greater;

(ii) That results from a risk that is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement;

(iii) For which the Contractor is otherwise responsible under the express terms of this contract;

(iv) That results from willful misconduct or lack of good faith on the part of the Contractor's managerial personnel; or

(v) That results from a failure on the part of the Contractor, due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel, to establish and administer a program or system for the control, use, protection, preservation, maintenance, and repair of Government property as required by paragraph (e) of this clause.

(3) (i) If the Contractor fails to act as provided by subdivision (g)(2)(v) above, after being notified (by certified mail addressed to one of the Contractor's managerial personnel) of the Government's disapproval, withdrawal of approval, or nonacceptance of the system or program, it shall be conclusively presumed that such failure was due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel.

(ii) In such event, any loss or destruction of, or damage to, the Government property shall be presumed to have resulted from such failure unless the Contractor can establish by clear and convincing evidence that such loss, destruction, or damage--

(A) Did not result from the Contractor's failure to maintain an approved program or system; or

(B) Occurred while an approved program or system was maintained by the Contractor.

(4) If the Contractor transfers Government property to the possession and control of a subcontractor, the transfer shall not affect the liability of the Contractor for loss or destruction of, or damage to, the property as set forth above. However, the Contractor shall require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of, or damage to, the property while in the subcontractor's possession or control, except to the extent that the subcontract, with the advance approval of the Contracting Officer, relieves the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear or for its use in accordance with the provisions of the prime contract.

(5) Upon loss or destruction of, or damage to, Government property provided under this contract, the Contractor shall so notify the Contracting Officer and shall communicate with the loss and salvage organization, if any, designated by the Contracting Officer. With the assistance of any such organization, the Contractor shall take all reasonable action to protect the Government property from further damage,

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separate the damaged and undamaged Government property, put all the affected Government property in the best possible order, and furnish to the Contracting Officer a statement of--

- (i) The lost, destroyed, or damaged Government property;
- (ii) The time and origin of the loss, destruction, or damage;
- (iii) All known interests in commingled property of which the Government property is a part; and
- (iv) The insurance, if any, covering any part of or interest in such commingled property.

(6) The Contractor shall repair, renovate, and take such other action with respect to damaged Government property as the Contracting Officer directs. If the Government property is destroyed or damaged beyond practical repair, or is damaged and so commingled or combined with property of others (including the Contractor's) that separation is impractical, the Contractor may, with the approval of and subject to any conditions imposed by the Contracting Officer, sell such property for the account of the Government. Such sales may be made in order to minimize the loss to the Government, to permit the resumption of business, or to accomplish a similar purpose. The Contractor shall be entitled to an equitable adjustment in the contract price for the expenditures made in performing the obligations under this subparagraph (g)(6) in accordance with paragraph (h) of this clause. However, the Government may directly reimburse the loss and salvage organization for any of their charges. The Contracting Officer shall give due regard to the Contractor's liability under this paragraph (g) when making any such equitable adjustment.

(7) The Contractor shall not be reimbursed for, and shall not include as an item of over head, the cost of insurance or of any reserve covering risk of loss or destruction of, or damage to, Government property, except to the extent that the Government may have expressly required the Contractor to carry such insurance under another provision of this contract.

(8) In the event the Contractor is reimbursed or otherwise compensated for any loss or destruction of, or damage to, Government property, the Contractor shall use the proceeds to repair, renovate, or replace the lost, destroyed, or damaged Government property or shall otherwise credit the proceeds to, or equitably reimburse, the Government, as directed by the Contracting Officer.

(9) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss or destruction of, or damage to, Government property. Upon the request of the Contracting Officer, the Contractor shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where a subcontractor has not been relieved from liability for any loss or destruction of, or damage to, Government property, the Contractor shall enforce for the benefit of the Government the liability of the subcontractor for such loss, destruction, or damage.

**(h) Equitable adjustment.**

When this clause specifies an equitable adjustment, it shall be made to any affected contract provision in accordance with the procedures of the Changes clause. When appropriate, the Contracting Officer may initiate an equitable adjustment in favor of the Government. The right to an equitable adjustment shall be the Contractor's exclusive remedy. The Government shall not be liable to suit for breach of contract for--

- (1) Any delay in delivery of Government-furnished property;
- (2) Delivery of Government-furnished property in a condition not suitable for its intended use;
- (3) A decrease in or substitution of Government-furnished property; or
- (4) Failure to repair or replace Government property for which the Government is responsible.

(i) Final accounting and disposition of Government property. Upon completing this contract, or at such earlier dates as may be fixed by the Contracting Officer, the Contractor shall submit, in a form acceptable to the Contracting Officer, inventory schedules covering all items of Government property not consumed in performing this contract or delivered to the Government. The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the cost of the work



covered by this contract or paid to the Government as directed by the Contracting Officer. The foregoing provisions shall apply to scrap from Government property; provided, however, that the Contracting Officer may authorize or direct the Contractor to omit from such inventory schedules any scrap consisting of faulty castings or forgings or of cutting and processing waste, such as chips, cuttings, borings, turnings, short ends, circles, trimmings, clippings, and remnants, and to dispose of such scrap in accordance with the Contractor's normal practice and account for it as part of general overhead or other reimbursable costs in accordance with the Contractor's established accounting procedures.

**(j) Abandonment and restoration of Contractor premises.**

Unless otherwise provided herein, the Government--

(1) May abandon any Government property in place, at which time all obligations of the Government regarding such abandoned property shall cease; and

(2) Has no obligation to restore or rehabilitate the Contractor's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or contract completion). However, if the Government-furnished property (listed in the Schedule or specifications) is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment made under paragraph (h) of this clause may properly include restoration or rehabilitation costs.

**(k) Communications.**

All communications under this clause shall be in writing.

**(l) Overseas contracts.**

If this contract is to be performed outside the United States of America, its territories, or possessions, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

**952.251-70 CONTRACTOR EMPLOYEE TRAVEL DISCOUNTS (DEC 2000)**

(a) The contractor shall take advantage of the travel discounts offered to Federal contractor employee travelers by AMTRAK, hotels, motels, or car rental companies, when use of such discounts would result in lower overall trip costs and the discounted services are reasonably available. Vendors providing these services may require the contractor employee to furnish them a letter of identification signed by the authorized contracting officer.

(b) Contracted airlines. Contractors are not eligible for GSA contract city pair fares.

(c) Discount rail service. AMTRAK voluntarily offers discounts to Federal travelers on official business and sometimes extends those discounts to Federal contractor employees.

(d) Hotels/motels. Many lodging providers extend their discount rates for Federal employees to Federal contractor employees.

(e) Car rentals. The Military Traffic Management Command (MTMC) of the Department of Defense negotiates rate agreements with car rental companies that are available to Federal travelers on official business. Some car rental companies extend those discounts to Federal contractor employees.

**(f) Obtaining travel discounts.**

(1) To determine which vendors offer discounts to Government contractors, the contractor may review commercial publications such as the Official Airline guides Official Traveler, Innovata, or National Telecommunications. The contractor may also obtain this information from GSA contract Travel Management Centers or the Department of Defense's Commercial Travel Offices.

(2) The vendor providing the service may require the Government contractor to furnish a letter signed by the contracting officer. The following illustrates a standard letter of identification.



(OFFICIAL AGENCY LETTERHEAD)

TO: Participating Vendor  
SUBJECT: OFFICIAL TRAVEL OF GOVERNMENT CONTRACTOR

(FULL NAME OF TRAVELER), the bearer of this letter is an employee of (COMPANY NAME) which has a contract with this agency under Government contract (CONTRACT NUMBER). During the period of the contract (GIVE DATES), AND WITH THE APPROVAL OF THE CONTRACT VENDOR, the employee is eligible and authorized to use available travel discount rates in accordance with Government contracts and/or agreements. Government Contract City Pair fares are not available to Contractors.  
SIGNATURE, Title and telephone number of Contracting Officer

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PART III - LIST OF DOCUMENTS, EXHIBITS & ATTACHMENTS  
SECTION J - LIST OF ATTACHMENTS

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DOCUMENT	PGS	DATE	TITLE
ATTACHMENT 1	11	26 July 2002	PERFORMANCE WORK STATEMENT (PWS), ENTITLED "TRAINING/SUPPORT SERVICES FOR THE OFFICE OF SECURE TRANSPORTATION
ATTACHMENT 2	4	12 July 2002	REPORTING REQUIREMENTS
ATTACHMENT 3	3	3 July 2002	CONTRACT SECURITY CLASSIFICATION SPECIFICATION (DOE F 470.1)
ATTACHMENT 4	70	June 2003	U.S. DEPT OF LABOR WAGE DETERMINATIONS FOR TX (1994-2517), NM (1994-2361), AR (1994-2037), TN (1994-2493)
ATTACHMENT 5	10	26 July 2002	PERFORMANCE EVALUATION QA PLAN
ATTACHMENT 6	307		GOVERNMENT FURNISHED PROPERTY (Hard copy of complete asset report is available in the NNSA Service Center, Office of Business Services)

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